

**IN THE CIRCUIT COURT OF HOWARD COUNTY
STATE OF MISSOURI**

| | | |
|-----------------------------------|---|------------------------------|
| STATE OF MISSOURI, ex rel. |) | |
| JEREMIAH W. (JAY) NIXON |) | |
| Attorney General, |) | |
| |) | |
| Plaintiff, |) | Case No. 06HD-CV00065 |
| |) | |
| v. |) | |
| |) | |
| MITCHELL JUSTIN LEONARD, |) | |
| MJL CATTLE CO., LLC |) | |
| JASON S. HACKMAN, |) | |
| BENJAMIN NELSON LEONARD, |) | |
| STRAIGHT A CATTLE COMPANY, |) | |
| PEGGY L. MORROW, |) | |
| and |) | |
| LANCE NEFF |) | |
| |) | |
| Defendants. |) | |

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT**

BE IT REMEMBERED THAT BETWEEN JULY 28, 2008 AND AUGUST 13, 2008, the plaintiff appeared by Missouri Assistant Attorney Generals, Renee Slusher, Cyrus Dashtaki and David Angle; Defendant, Mitchell J. Leonard appeared in person and by attorneys William Rotts and Kelly Wallis; Defendant, M.J.L. Cattle Co. LLC, appeared by attorneys, William Rotts and Kelly Wallis; Defendant Jason Hackman, appeared in person and by attorney, Earl Seitz; Defendants Peggy Morrow and Lance Neff, appeared in person, pro se; No other parties or persons appeared in person or by counsel; Plaintiff presented evidence and rested; Defendants Mitchell J. Leonard and M.J.L. Cattle Co. LLC presented evidence and rested; No other party presented evidence; Plaintiff then made it's closing argument to the court and the defendants, Mitchell J. Leonard and M.J.L. Cattle Co. LLC, made their closing argument to the court; The parties requested findings of fact and conclusions of law be entered in this case;

Court ordered each party to submit proposed findings of fact and conclusions of law to the court on or before September 29, 2008, and took the case under advisement pending receipt of the proposed findings of fact and conclusions of law.

BE IT FURTHER REMEMBERED THAT ON THE 30TH DAY OF SEPTEMBER 2008, the court sustained the joint request of the parties to extend the time to file proposed findings of fact and conclusions of law to October 10, 2008;

BE IT FURTHER REMEMBERED THAT ON THE 7TH DAY OF OCTOBER 2008, the court again sustained the joint request of the parties to extend the time to file proposed findings of fact and conclusions of law to October 15, 2008;

BE IT FURTHER REMEMBERED THAT ON THE 15TH DAY OF OCTOBER 2008, the plaintiff and defendants, Mitchell J. Leonard, M.J.L. Cattle Co. LLC and Jason Hackman filed their proposed findings of fact and conclusions of law with the court.

NOW ON THIS 16th DAY OF MARCH 2009, the court after reviewing the evidence, law and proposed findings of fact and conclusions of law submitted herein enters the following findings of fact, conclusions of law and judgment herein;

GENERAL FINDINGS OF FACT

Parties

1. This case is an action for violation of the Missouri Merchandising Practices Act, injunctive relief, restitution, civil penalties and other relief filed by the Missouri Attorney General pursuant to § 407.020, *et seq.*¹

¹ All statutory references are to RSMo. 2000, unless otherwise indicated.

2. Defendant Mitchell J. Leonard (hereinafter referred to as “Leonard”) is a cattleman and a resident of Howard County, Missouri.
3. MJL Cattle Company, LLC (hereinafter referred to as “MJL Cattle”) is a Missouri limited liability company formed and organized by Leonard in 2001. MJL Cattle is used by Leonard to facilitate, process, and participate in the buying and selling of cattle. MJL Cattle’s principal place of business is in Howard County, Missouri.
4. During 2003 and 2004, Defendant Robert Simmons (hereinafter referred to as “Simmons”) was an agent and commissioned salesperson of Leonard and MJL Cattle, wherein he advertised, offered and sold cattle for said Defendants under his own name and the fictitious business entity, B&S Farms. During said time period, Simmons also worked as an employee for Leonard and MJL Cattle as a farm hand. He initially lived at the Lake of the Ozarks and then later moved to Boonville, Missouri.
5. During 2003 and 2004, Defendant Jason Hackman (hereinafter referred to as “Hackman”) was an agent and commissioned salesperson of Leonard and MJL Cattle, wherein he advertised, offered and sold cattle for said Defendants under his own name and the fictitious business entity, Hackman Farms. During said time period, Hackman also worked as an employee for Leonard and MJL Cattle as a farm hand and lived in New Franklin, Missouri.
6. During 2003 and 2004, Defendant Peggy Morrow (hereinafter referred to as “Morrow”) was an agent and commissioned salesperson of Leonard and MJL Cattle, wherein she advertised, offered and sold cattle for said Defendant, Leonard and MJL Cattle under her own name and the fictitious business entity, Straight A Cattle. She also at times sold cattle independently of defendants Leonard and MJL Cattle in partnership with her son,

- defendant, Lance Neff. During said time period, she lived in Oak Grove, Missouri.
7. During 2003 and 2004, Defendant Lance Neff (hereinafter referred to as “Neff”) was an agent and commissioned salesperson of Leonard and MJL Cattle, wherein he advertised, offered and sold cattle for said Defendants under his own name and the fictitious business entity, Straight A Cattle. He also at times sold cattle independently of defendants Leonard and MJL Cattle in partnership with his mother defendant, Peggy Morrow.
.During said time period, he lived in Napton, Missouri.
 8. On March 22, 2007, this Court entered an interlocutory default judgment against Neff for violations of §407.020, occurring during the offer and sale of cattle that is the subject of this pending matter.
 9. On July 21, 2006, this Court entered an interlocutory default judgment against Straight A Cattle Company.
 10. During 2003 and 2004, Defendant Benjamin Leonard was an agent and commissioned salesperson of Leonard and MJL Cattle, wherein he advertised, offered and sold cattle for said Defendants under his own name.
 11. On or about July 9, 2007, this Court entered a Consent Judgment against Benjamin Leonard resolving a consumer transaction that is no longer the subject of this pending matter.

Defendants Mitch Leonard and MJL Cattle

12. Leonard is the sole owner of MJL Cattle. He never consulted anyone about the day to day operations of the business. Leonard established all policies, procedures for MJL Cattle and made all business decisions. MJL Cattle has always been operated out of a main checking account at Alliant Bank in Boonville, Missouri, except for a small bank

account used for handling its rental properties.

13. At all relevant times, Leonard never had a personal checking account. He paid for his personal expenses with money from MJL Cattle's main checking account. MJL Cattle owned the house in which he and his family lived and the cars he drove. MLJ Cattle essentially paid for all of Leonard's personal bills and living expenses during the relevant time period. Leonard and MJL commingled funds.
14. Leonard and MJL Cattle acquired 90% of their cows from sale barns, and they purchased cows of all ages, weights, breeds, and stages of pregnancy. They did not buy top quality cows.
15. Leonard and MJL Cattle maintained their cattle on land they owned, leased or otherwise operated or controlled.
16. Leonard and MJL Cattle generally sorted their cows into the following age groups: 1) heifers (young cows that have never been pregnant); 2) ages 4 to short and solid (teeth worn down but still intact and thus not broken); and 3) broken mouth or older cows (containing one or more broken teeth or teeth that are worn down to the gums so as to be of little or no use in eating).
17. Leonard and MJL Cattle further subdivided the cattle by their pregnancy status as follows: 1) non-pregnant cows, otherwise known as "open"; 2) cows in their 1st trimester of pregnancy; and 3) cows in their 2nd and 3rd trimester of pregnancy. These groups were further subdivided by body condition (fleshy verses thin) and breed.
18. Once the cows were sorted, the Defendants did not know: 1) the specific numerical age of a cow; 2) whether a cow was in her 2nd or 3rd period of pregnancy; 3) the type of bull to which she was bred; 4) a cow's prior calving and health history; and 5) the source or

origin of the cow.

19. The cows were generally sorted by Leonard and MJL Cattle into different pastures based on information contained on the cows' back tags from the sale barns.
20. Leonard and MJL Cattle, nor their brokers, ever aged or pregnancy checked a cow unless a consumer paid the cost to have it done.
21. Leonard and MJL Cattle did not maintain a standing herd and they did not own cows longer than one year.
22. During the relevant time period, Leonard and MJL Cattle utilized the services of brokers to advertise, offer and arrange the sale of their cows to others. In 2003 and 2004, Simmons, Hackman, Morrow, Neff and Ben Leonard were brokers or agents for Leonard and MJL Cattle and acted at their behest.
23. Leonard and MJL Cattle authorized Simmons, Hackman, Morrow, Neff and Ben Leonard to: 1) advertise their cows; 2) take potential customers onto their land to inspect the cows; 3) offer for sale their cows for a minimum price fixed by them; and 4) negotiate and finalize the sale for them.
24. The brokers retained as their commission any amount of money the consumers paid for the cows above the minimum price set by Leonard and MJL Cattle.
25. Simmons, Morrow, Neff and Ben Leonard paid to advertise the cows in trade journals.
26. Leonard and MJL Cattle advanced money to Hackman to pay for his advertisements since he did not have enough funds to pay otherwise. Leonard and MJL Cattle also paid for Hackman's cell phone that was used to conduct his cattle sales.
27. The brokers worded their advertisements based upon information they received from Leonard.

28. A broker could offer and sell any cow owned by Leonard and MJL Cattle despite the fact that another broker may have placed an advertisement for the cow. Leonard updated his brokers whenever advertised cows were sold by another broker.
29. Brokers took potential customers to property owned, leased, controlled or operated by Leonard and MJL Cattle to inspect the cows. They commonly took potential customers to Leonard's mother's property and Ravenswood, an old plantation owned by Leonard's family.
30. The brokers never mentioned the name Leonard or MJL Cattle to consumers, and never informed the consumers that Leonard and MJL Cattle owned the cows.
31. The brokers never took possession of or purchased the cattle from Leonard and MJL Cattle.
32. The brokers represented the cows to potential buyers based upon the information they received from Leonard, including, but not limited to, age, pregnancy stage, length of ownership, calving history, breed, and health history.
33. Like Leonard, the brokers maintained bank accounts at Alliant Bank in Boonville, Missouri. This was at Leonard's directive so as to facilitate the transfer of money between his account and the brokers' accounts in a quick and timely fashion.
34. Many times when the brokers informed the consumers that they would arrange transportation to haul the cows, Leonard was the one who contacted the truckers.
35. When cows are shipped across state lines, there is a requirement that each cow be examined by a licensed veterinarian for certain diseases. This is done through blood work on each cow and then a health certificate is prepared by the veterinarian and recorded with the USDA and the state.

36. Leonard and MJL Cattle arranged and paid for all required health certificates. They primarily used the veterinary services of Dr. Bryan McHugh. Leonard instructed Dr. McHugh as to which broker to list as the consignor on the health certificate, depending upon which broker arranged the sale.
37. Dr. McHugh was familiar with Hackman and Simmons through his services for Leonard and MJL Cattle. He was unfamiliar with Morrow and Neff. He recalled no other clients, except Leonard and MJL Cattle, located off Highway 5 in Boonville, Missouri.
38. Leonard and MJL Cattle, through their employees, cared for and maintained the cattle facilities. The brokers did not assist in the care and management of the cows, except when Simmons and Hackman worked as farm hands.
39. Regardless of which broker arranged the sale, the cows were loaded and sorted onto trucks by Leonard or one of his employees. Hackman was one of the main employees directed by Leonard to sort and load the cows.
40. The cows were usually loaded out of corrals located on Leonard's mother's farm in Howard County, Missouri.
41. Many times Leonard had cows loaded for delivery to consumers that were not the same cows the consumers observed in the pastures and agreed to purchase. Many times Leonard and MJL Cattle filled consumers' orders by purchasing additional cattle at sale barns or pulling cows from other pastures.
42. The brokers informed Leonard when they received consumer complaints regarding the quality or condition of the cows.
43. At all relevant times, the only business records maintained by Leonard and MJL Cattle were check stubs, bank statements, veterinarian invoices and sale invoices from cattle

purchases at sale barns. They did not maintain any cattle logs, personal notes or business journals regarding the ages, pregnancy, breed, or other conditions of the cows.

Defendant Robert Simmons

44. In 2003 and 2004, Simmons possessed no land on which to maintain cattle. He last owned cattle in 1995 or 1996.
45. Simmons opened a checking account at Alliant Bank in Boonville, Missouri under the name of B&S Farms while living at the Lake of the Ozarks. B&S Farms was merely Simmons d/b/a B&S Farms. The account was opened for a short period of time, and Simmons conducted only three or four cattle related transactions through it in his role as a broker for Leonard and MJL Cattle.
46. Around 1999 or 2000, Leonard called Simmons and asked him if he would help him sell his cows.
47. Simmons viewed himself as the “seller” of the cows because he was selling the cows, but he did not consider himself the owner of the cows that were being sold.
48. Leonard and Simmons talked on the telephone or met in person every day or two. Sometimes they talked three or four times a day. They discussed what cows Leonard had for sale and what cows would soon arrive on the farm.
49. Leonard and Simmons often drove through the cows and discussed their ages and pregnancy stages, as well as other material information. Leonard and Simmons discussed the price at which the cows should be sold.
50. Per Leonard’s instructions, Simmons required consumers to make a down payment on the cows prior to delivery. He then required final payment immediately before delivery of the cows.

51. Simmons usually endorsed the back of consumers' checks and then delivered the checks to Leonard for deposit into his main MJL Cattle checking account. Occasionally, Simmons deposited the checks into his B&S Farms checking account at Alliant Bank and then immediately transferred the money, minus his commissions, into MJL Cattle's main checking account at Alliant Bank.
52. If a consumer wire transferred money, Simmons informed the consumer to send the money directly to MJL Cattle's main checking account.
53. When Leonard deposited a consumer's check directly into his MJL Cattle main checking account, he paid Simmons his commission by writing a check to Simmons' wife. Usually the check referenced the word commission on the memo line. Simmons and Leonard endeavored to reach a commission of \$25 per head.
54. Simmons was an integral part of Leonard's cattle business in that he had no money involved but he "sold lots of cows for him."
55. Simmons never met Morrow. He only saw Neff at Leonard's mother's property once.
56. In 2003 and 2004, Simmons knew that Hackman was a broker for Leonard and MJL Cattle.
57. On or about August 27, 2007, Simmons was convicted of one count of unlawful merchandising practices pursuant to §407.020.3, in *State v. Simmons*, Case No. 06H5-CR00200-01, Circuit Court Howard County, Missouri, in relation to his transaction with Consumer Randy Kell.
58. During Simmons' sentencing hearing he addressed Kell and stated:

I know you have been wronged and I never meant for it to happen. I swear to God, I never meant for any of this to happen ... It's caused me bad trouble and I got out of it as soon as I thought there was anything wrong, I did get out of it. As soon as I suspected a rat, I got out. I didn't want to be a part of it.

Defendants Jason Hackman and Hackman Farms

59. In 2003, Hackman began using the name “Hackman Farms” while serving as a broker for Leonard and MJL Cattle. Hackman Farms was merely Hackman d/b/a Hackman Farms.
60. From 2003 into 2005, Hackman worked almost every single day as a full-time farm hand for Leonard and MJL. He cared for the cows daily and sorted them when they arrived at the farm. His salary was approximately \$7 an hour.
61. Hackman had very little knowledge of cattle before he began working for Leonard and MJL Cattle.
62. Hackman knew that Simmons worked as a broker for Leonard and MJL Cattle. He never met Morrow and was only vaguely familiar with Neff.
63. Hackman never owned or leased land on which he could raise cattle himself.
64. Hackman asked other employees of Leonard and MJL Cattle to show cows to potential buyers for him when he was too busy working as a farm hand.
65. If a consumer was interested in purchasing cows, Hackman asked for a down payment per Leonard’s instructions. He received the down payment in the form of a check that he agreed to hold and then return upon full payment.
66. Most of the time, Hackman deposited the consumer’s full payment into his Hackman Farm account at Alliant Bank and then transferred funds to Leonard and MJL Cattle’s main checking account at Alliant Bank, minus his commission. Occasionally, Hackman endorsed the checks and then delivered them to Leonard for deposit into his MJL Cattle checking account.
67. Hackman was unaware of any cows loaded for or purchased by Morrow, Neff, David Krugger or D&L Farms. He was not aware of any cows being shipped to Marshall

Livestock Auction.

68. Hackman pled guilty to four felony counts of unlawful merchandising practices pursuant to §407.020.3, in *State v. Hackman*, Case No. 06H5-CR00201, Circuit Court Howard County, At Hackman's Sentencing Hearing, he agreed with the State's evidence that:
- a. He misrepresented to Consumer Jeff Boardman that the cows he purchased would deliver calves between October 15, 2004 and December 15, 2004;
 - b. He misrepresented to Consumer Cory Wagner that he owned the cows for the past three years and they were all pregnant, black or black-white faced, bred to black bulls, and were all ages 4 to 6 years; and
 - c. One-half the cows Wagner received were over the age of 6 years.

Defendants Peggy Morrow, Lance Neff and Straight A Cattle Ranch

69. On or about September 10, 2003, Morrow and Neff opened a checking account at Alliant Bank in Boonville, Missouri under the name of "Straight A Cattle".
70. Morrow and Neff used the Straight A Cattle checking account to conduct business as brokers for Leonard and MJL Cattle and for other cattle business they conducted outside of their agency relationship with said Defendants.
71. Per Leonard's instructions, Morrow and Neff requested a down payment from consumers purchasing cows.
72. Morrow and Neff deposited consumers' money into their Straight A Cattle checking account at Alliant Bank and then transferred money, minus their commissions, into Leonard and MJL Cattle's main checking account at Alliant Bank. At times they used the consumers' money to purchase cattle as agents for Leonard and MJL Cattle to assist in filling orders when Leonard and MJL Cattle did not have enough inventory on hand.
73. Neff had prior experience in the cattle business, including being a partner in D & L

Farms. D & L Farm was primarily engaged in row cropping and it occasionally bought and sold cows. Morrow and Neff also bought and sold cows on their own. Neff maintained a cattle holding and loading facility.

74. On June 14, 2007, Morrow pled guilty to two counts of unlawful merchandising practices, Class D Felonies, in *State v. Morrow*, Case No. 06H5-CR00202-01, Circuit Court of Howard County.
75. The two counts in which Morrow pled guilty were:
 - a. Morrow misrepresented to Consumer Gary Sevenans that for \$52,000 he would receive 80 cows that she owned that were 90% to 95% home raised; and
 - b. Morrow misrepresented to Sevenans that the 80 cows he purchased were 9 years old or younger, when in fact he received 60 cows that were older than 9 years.
76. On June 25, 2007, Morrow pled guilty to seven counts of unlawful merchandising practices, Class D Felonies, in *State v. Morrow*, Case No. 06CO-CR00308-01, Circuit Court of Cooper County.
77. The eight counts that she pled guilty to were:
 - a. She misrepresented to Consumer Tyler Hills that he would receive cows that were 8 years old or younger;
 - b. She misrepresented to Hills that she owned the cows and they were 95% home raised;
 - c. She misrepresented to Hills that he would receive cows that were pregnant and set to deliver calves between October 2003 and December 2003;
 - d. She misrepresented to Consumer Darin Messersmith that he would receive cows that were all owned by her and were home raised;
 - e. She misrepresented to Messersmith that he would receive cows that were 3 to 5 years old;
 - f. She misrepresented to Messersmith that he would receive cows that were all

pregnant and set to deliver calves between October 2003 and December 2003;

- g. She misrepresented to Consumer Job Keltner that for an advanced fee he would receive 300 head of cattle; and
- h. She misrepresented to Keltner that she would refund his \$45,000 deposit.

Plaintiff's Expert

78. Plaintiff called Dr. Brad White, a licensed veterinarian, as an expert on beef cattle medicine. He credibly opined that:

- a. Cows have an average conception period of 285 days and their pregnancy is divided into three trimesters. The most common method used by veterinarians to verify pregnancy is via rectal palpation. This method is 95% accurate in determining whether a cow is pregnant after 45 days of conception.
- b. Diagnosing a cow's pregnancy stage is not an exact science and there is a 10% to 20% error rate in distinguishing whether a cow is in her 1st or 2nd trimester of pregnancy. The error rate is approximately 20% in distinguishing between 2nd and 3rd trimester.
- c. Cows miscarry their calves at a higher rate in their 1st period of pregnancy, around 5% to 12%, and this rate decreases to 3% to 5% in the 2nd trimester and falls to less than 2% in the 3rd trimester.
- d. If a cow's numerical age is unknown, then veterinarians commonly examine a cow's lower incisors to determine age. If a cow is less than 5 years of age, veterinarians are 90% accurate in determining age within one year since the cow is still in the process of acquiring her adult teeth. Once a cow obtains her permanent teeth, aging is determined by the wear and tear of the teeth.
- e. Diagnosing a cow between the ages of 5 to 8 years of age is accurate up to 85% to 90% of the time. When a cow is between the ages of 8 to 10 years, she will show significant wear and her incisors will become level and decrease in size; this is often referred to as "short and solid." Short and solid cows are typically older than 8 years.
- f. Animals with missing teeth or incisors worn to the gums are typically older than 10 years old and can be referred to as a "gummer" or "smooth mouth" or "pearls." Cow of this age may have problems procuring and processing food.
- g. Cows are in their prime during the ages of 5 to 8 years old.

Cattle Purchases

79. Age and pregnancy are cost drivers in cattle purchases. Farmers generally want cows calving during a tight or narrow calving period because calves that are uniform in weight and age generally bring higher prices.
80. A tight calving cycle is also important because it allows farmers to better coordinate the sale of their calves to the date their loan payments are due. If a calf crop is spread out over time it can throw off a cow-calf operator's entire operation. Also, farmers want a tight calving cycle for convenience since it takes more oversight when cows are calving.
81. During the relevant time period, black-hided cows and calves sold for a premium.
82. The source or origin of the cows is also important to farmers. Farmers are often interested in the health history of the cows and the potential for disease transfer. Also, the calving history is important because cows that do not produce a calf are commonly sold or culled from the herd each year. The health and calving history of cows sold through sale barns is generally unknown.
83. Farmers often place a premium on cows purchased through a single source. Defense witness, Cary Jones, owner of Marshall Livestock Auction in Marshall, Missouri since 1972, stated that at the relevant time period the value difference between cows from a single source or closed herd verses cows purchased through a sale barn was \$200. Jones further testified that as a cow advances in her pregnancy, her value increases.
84. Whenever a cow is sold through a sale barn, a veterinarian inspects the cow's health, age, and pregnancy status. The cow is also bled for brucellosis and receives a unique federal identification number in the form of a metal tag placed in the cow's ear, referred to as a bangs tag. This number is registered with the USDA and the state. Whenever the cow is

subsequently sold at a sale barn in the United States this number is recorded and the cow can generally be tracked through governmental records.

85. All the consumers who testified at trial were experienced cattlemen and were familiar with the cattle industry, including cattle prices at the time of their transactions and they maintained a sufficient factual basis to estimate their losses.

Consumer Randy Kell

86. Randy Kell is a resident of Raymondville, Missouri. He is approximately 50 years old, and has been in the cattle business for over twenty years. He operates a cow-calf operation.
87. In October 2003, Kell responded to an advertisement in the Ad Tracker that was paid for by Simmons in his role as a broker for Leonard and MJL Cattle.
88. On or about October 13, 2003, Kell met Simmons at the Pilot Truck Stop in Boonville, Missouri. They viewed cows in five pastures owned or operated by Leonard and MJL Cattle.
89. Simmons represented to Kell that all of the cows: 1) were guaranteed to be 3 to 7 years old, except that 5 to 7 of the cows were short and solid, but no cows were broken mouth; 2) were guaranteed to be in their 2nd or 3rd period of pregnancy; 3) had raised at least one or two calves on his farm; and 4) had been aged and pregnancy tested by a veterinarian within the last 2 or 3 weeks.
90. At one pasture, Simmons said the land belonged to his mother and he would inherit it one day. Simmons also said a veterinarian rented the land from him for hunting rights. These two statements were material misrepresentations designed to deceive Kell into further believing that Simmons owned the cows and he was a reputable seller.

91. On or about October 13, 2003, Kell, in ownership with his wife, agreed to purchase 396 cows shown and represented by Simmons. Kell agreed to pay \$769 per head for a total purchase price of \$304,500.
92. Simmons did not charge Kell extra to have the cows aged and pregnancy checked which is indicative that Defendants did not hire a veterinarian to examine the cows to ascertain age or pregnancy status.
93. On or about October 13, 2003, Kell paid Simmons a \$10,000 down payment check. Simmons endorsed the check and delivered it to Leonard. On or about October 14, 2003, Leonard signed and deposited the check.
94. Simmons agreed to arrange for some of the trucks needed to haul the cows. He also agreed that Kell could view the cattle before they were loaded. Kell paid \$3,466 in trucking charges.
95. On or about October 23, 2003, Kell took delivery of the cows. He arrived early that day to view the cows but observed no signs that the cows had been moved. Later that morning, Simmons arrived late and informed Kell that two truck loads of cows were already enroute to his farm. Kell left immediately for his farm in order to be present to unload the cows. He was unable to view the cows before loading as previously agreed. Leonard and Simmons engaged in an unfair practice by hindering Kell's ability to view the quality and condition of the cows and to ensure he was getting the cows he agreed to purchase.
96. Leonard and MJL loaded the cattle and delivered 401 cows to Kell.
97. On or about October 23, 2003, prior to viewing and unloading the cows, Kell gave Simmons a \$294,500 check. Simmons endorsed the check and delivered it to Leonard.

- On the same day, Leonard signed and deposited the check.
98. On or about October 24, 2003, Simmons received a \$10,000 commission for arranging the sale of cattle to Kell for Leonard and MJL Cattle. The commission was in the form of four \$2,500 checks. Two of the checks contained a reference to the word commission on the memo line.
 99. Upon inspection, Kell observed that at least half of the cows were different from the cows he observed in the field with Simmons. They were of less quality and desirability, and Kell was concerned that they would not survive the winter.
 100. Approximately half of the cows had back tag marks on them.
 101. According to a review of the records filed with the Missouri Department of Agriculture and the USDA, at least 175 of the purchased cows were bought at sale barns within 3 months of delivery to Kell. At least 28 of them were purchased after Kell made his down payment.
 102. Kell complained to Simmons about the quality and age of the cows without success. Simmons told Leonard about Kell's complaint. Leonard refused to address it. Eventually, Simmons stopped taking Kell's telephone calls.
 103. Approximately two weeks after the cows were delivered, Kell traveled back to Howard County to the pastures that he and Simmons had visited and observed what appeared to be the same set of cows that Simmons showed him.
 104. Kell reported his complaints to law enforcement.
 105. On or about November 29 and 30, 2003, Dr. B.C. Taylor examined 153 of the purchased cows due to Kell's concern that many of the cows were older than represented. Dr. Taylor has been a licensed veterinarian for 35 years and Kell's veterinarian for 25 years.

106. Dr. Taylor conservatively aged the cows and credibly opined that: 1) 54 of the cows were 10 years or older; 2) 41 of them were between the ages of 8 and 10 years; and 3) 58 were age 7 or younger.
107. Kell paid Dr. Taylor \$661 for his services.
108. On or about December 20, 2003, Kell sold 395 of the purchased cows and 65 of their calves at Interstate Regional Stockyard in Cuba, Missouri at a special cow sale to mitigate his damages. Six cows had died before this date.
109. The sale barn veterinarian, Dr. Glen Strasser, examined all of the cows. He has been a licensed veterinarian since 1964 and a sale barn veterinarian for 30 years. He credibly opined that: 1) 134 cows were broken mouth - 10 years or older; 2) 129 cows were short and solid – between the ages of 8 and 12 years; and 3) 131 cows were 7 years or younger. Accordingly, 233 cows were older than 7 years, which is indicative that they had not been aged by a veterinarian within two or three weeks of delivery as represented by Simmons
110. Kell's gross receipt from the sale was \$263,758.36. His net receipt, after charges and commissions, was \$251,969.23. He sustained a loss of \$52,530.77 from the purchase price of the cows even though cattle prices had been rising since he purchased the cows. This does not take into account the extra expenses he had to maintain the cows. Accordingly, at the time of delivery the fair market value of the cows he received verses the cows he should have received was at least \$52,530.77.
111. Kell filed a private lawsuit against Simmons, Leonard and MJL Cattle that was voluntarily dismissed without prejudice. Leonard and MJL Cattle sought to file a counter-claim for conversion against Kell for the 5 extra cows he received and requested

damages in the form of: 1) actual losses; 2) lost profits and revenues; and 3) \$500,000 in punitive damages.

112. Simmons, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:

- a. All cows had been aged by a veterinarian;
- b. All the cows were guaranteed to be 3 to 7 years old, except that 5 to 7 of them were short and solid, but none were broken mouth;
- c. All cows had been pregnancy tested by a veterinarian;
- d. He had owned all of the cows long enough for them to have raised at least one or two calves on his farm; and
- e. The pasture land was owned by his mother and he would inherit it one day and a veterinarian rented it from him for hunting rights.

113. Leonard and Simmons, as an agent of Leonard, engaged in the following unfair practices actionable under §407.020:

- a. Hindering Kell's ability to inspect the cows at the time of loading so as to prevent him from learning that at least half of the cows he received were not what he agreed to purchase or what he saw in the field with Simmons;
- b. A bait and switch scheme in which Kell was shown cattle of higher quality than at least half of the cows he received which was designed to induce him to purchase the cows; and
- c. Refusing to address Kell's consumer complaints regarding the condition of the cows he received.

114. Simmons, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:

- a. Failing to inform Kell that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through

sale barns; and

- b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.

115. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 10 violations of §407.020 before, during or after the sale of cows to Consumer Randy Kell.

Consumer Randy Byers

116. Randy Byers is a resident of Roseville, Illinois. He is approximately 60 years old, and has been in the cattle business for over twenty (20) years. He operates a cow-calf operation with two of his adult sons.
117. In the Spring of 2003, Byers responded to an advertisement in Iowa Farmer Today that was paid for by Simmons in his role as a broker for Leonard and MJL Cattle.
118. In March or April 2003, Byers met Simmons at the Pilot Truck Stop in Boonville, Missouri. They viewed cows in three pastures owned or operated by Leonard and MJL Cattle.
119. Simmons represented to Byers that all of the cows: 1) were primarily black or black-white faced; 2) were between the ages of 4 and 7 years; 3) had all calved for him 1 or 2 times; 4) were guaranteed pregnant and would all calve between September 1, 2003 and December 1, 2003; 5) had been vaccinated for diseases, including Lepto, IBR and BVD; 6) were in good health; and 7) were bred to black bulls.
120. Simmons informed Byers that he was selling the cows because he was getting out of the cattle business and wanted to spend more time in real estate. This statement was a material misrepresentation designed to deceive Byers into further believing Simmons

- owned the cows and he was a reputable seller.
121. In August 2003, Byers again contacted Simmons regarding the cows and Simmons told him they were still for sale.
 122. On or about August 8, 2003, Byers again viewed the cows at the same locations. Simmons made the same representations regarding the cows.
 123. Simmons also stated that he had pregnancy checked the cows himself about one month ago. This statement was a material misrepresentation designed to deceive Byers into further believing the cows would all calve between September 1, 2003 and December 1, 2003. Simmons is incapable of performing this laborious and technical skill due to his health problems.
 124. Byers inspected the cows again the following day.
 125. On or about August 9, 2003, Byers, in ownership with his partners, agreed to purchase 225 cows shown and represented by Simmons. As represented by Simmons, the cows were broken down into ages as follows: 1) 50 were 8 years or older for \$685 per head; and 2) 175 were between 4 and 7 years for \$785 per head. The total purchase price was \$171,625.
 126. Byers' partners in the cattle purchase were his two sons, Rodney and Roger Byers, and his business associate, Don Earp.
 127. On or about August 9, 2003, Byers gave Simmons a \$10,000 down payment check. Simmons endorsed it and delivered it to Leonard. On the same day, Leonard signed and deposited the check.
 128. Simmons agreed to arrange all the trucks to haul the cows, except for 10 cows that Byers hauled himself. Byers and his partners paid \$2,325.40 in trucking charges.

129. Simmons agreed to obtain and send health certificates. Byers and his partners never received the health certificates.
130. On August 18, 2003, the cows plus 34 calves were delivered. On the same day, Byers and his partners paid Simmons the remaining funds for the cows in the form of: 1) a check from Roger Byers in the amount of \$27,231.50; 2) a check from Don Earp in the amount of \$39,250; 3) a check from Randy Byers in the amount of \$57,488.50; and 4) a check from Rodney Byers in the amount of \$37,655.
131. Simmons endorsed the checks and delivered them to Leonard. On or about August 19, 2003, Leonard signed and deposited the checks.
132. On or about August 22, 2003, Simmons received a \$6,875 commission check from Leonard and MJL Cattle for arranging the sale of cattle to Byers. The memo line of the check contained a reference to the word "commission".
133. Byers and his sons maintained a calving log. According to the log, 24 cows calved after December 25, 2003. The last cow calved on February 6, 2004. Even with a grace period of over two weeks, 24 cows calved after the represented date of December 1, 2003. There were 53 open cows.
134. On or about December 19, 2003, Byers asked Dr. Raymond Huston to examine several cows for pregnancy due to the low calving rate and a noted increase death rate. Dr. Huston has been a licensed veterinarian since 1965 and Byers' veterinarian since the early 1970s.
135. By February 6, 2004, nine cows and twenty-two calves had died.
136. Due to the number of cows that did not rebreed in the spring of 2004, Byers had Dr. David Huston examine the cows.

137. Dr. David Huston has been a licensed veterinarian since 1981, and previously performed veterinarian services for Byers.
138. On or about April 14, 2004, Dr. David Huston drew blood from ten of the purchased cows. The serology report indicted that two cows tested positive for BVD (Bovine Virus Diarrahea) and two cows were suspicious for BVD. One cows tested positive for leptospirosis.
139. Dr. David Huston credibly opined that the purchased cows were infected with the BVD virus in Missouri and did not contract it on Byers' farm. He credibly opined that the BVD virus was the cause of 53 open cows, 9 dead cows and 22 dead calves within a reasonable degree of certainty in the field of veterinary medicine.
140. Dr. Raymond Huston credibly opined that if the cows had been properly vaccinated as represented and later exposed to the BVD virus the cows would have a minimal, and often times zero chance of contracting BVD. He credibly opined that BVD causes still births, open cows and deaths among both cows and calves. Accordingly, the cows had not been vaccinated as represented by Simmons.
141. Dr Raymond Huston testified that Byers was aware of the importance of a solid vaccination program and routinely vaccinated his cows. Byers never had problems with BVD in his herd and his other cows were not infected that were kept separate from the Missouri cows.
142. After November 30, 2003, Byers called Simmons to complain about the calving and death problems he was experiencing. Simmons hung-up the telephone on him and refused to answer Byers' subsequent telephone calls.
143. Between September and December 2003, Byers and his partners sold 19 of the purchased

cows that were not healthy for a loss of \$3,712.15. This loss is based upon the purchase price of \$685 per head.

144. The value of the 9 cows that died was \$685 per head for a total of \$6,165.
145. The value of the 22 calves that died was \$280 per calf for a total of \$6,160. Byers testified that his net profit for the calves after they had been weaned would have reasonable been \$280 per calf.
146. The value of the lost calves from the 53 open cows at \$280 per calf was \$14,840.
147. Byers testified that the difference in value between sale barn cows and cows that Simmons represented to have been on his farm for one or two calving cycles at the time of delivery was \$150 per head or a total of \$33,750.
148. Byers also testified that the fair market value difference between the cows he should have received as represented by Simmons and the cows he did receive was \$300 per head for a loss at delivery of \$67,500. This amount includes, but is not limited to, the value difference of \$150 per head for single source cows verses sale barn cows and the value of the dead cows and calves.
149. Simmons, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
 - a. He owned the cows and they had all calved for him one or two times;
 - b. All cows were guaranteed pregnant and would calve between September and December 1, 2003;
 - c. He had pregnancy checked the cows himself;
 - d. All cows were between the ages of 4 and 7 years old;
 - e. All cows had been vaccinated for diseases, including Lepto, IBR and BVD;

- f. All cows were in good health;
 - g. Byers would receive health certificates; and
 - h. He was selling the cows because he wanted to get out of the cattle business and spend more time in real estate.
- 150. Leonard and Simmons, as an agent of Leonard, engaged in an unfair practice actionable under §407.020, when they refused to address Byers' consumer complaints regarding the condition of the cows he received.
- 151. Simmons, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
 - a. Failing to inform Byers that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.
- 152. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 11 violations of §407.020 before, during or after the sale of cows to Consumer Randy Byers.

Consumer Don Collins

- 153. Don Collins is resident of Danbury, Iowa. He is approximately 59 years old and is a third generation farmer. He has operated his own cattle business for over twenty (20) years. In 2004, he lived in Nebraska.
- 154. In June 2004, Collins responded to an advertisement in The Iowa Farmer that was paid for by Simmons in his role as a broker for Leonard and MJL Cattle.

155. On or about June 29, 2004, Collins met Simmons at Arby's Restaurant in Boonville, Missouri. Simmons drove him to Ravenswood to view approximately 30 Charolais-cross cows and some calves.
156. Simmons told Collins that he and his wife owned Ravenswood and were restoring it. Simmons said he was selling the cows because he and his wife wanted to "cut down" and travel. These statements were material misrepresentations designed to make Collins further believe Simmons owned the cows and he was a reputable seller.
157. Simmons took Collins to a second pasture north of New Franklin that was owned or operated by Leonard and MJL Cattle. Simmons told Collins that his mother lived at this location. This was also a material misrepresentation further designed to make Collins believe that Simmons owned the cows.
158. Collins viewed approximately 70 to 80 cows in the second pasture.
159. Simmons represented to Collins that he owned the cows in both pastures and they were:
1) mostly all home raised; 2) between the ages of 4 to 6 years, with a few 7 year olds; 3) all pregnancy checked; 4) would calve by October 1, 2004; 5) recent on their vaccinations; 6) had been aged by a veterinarian; 7) of good dispositions; and 8) Black Angus.
160. On or about June 29, 2004, Collins, in ownership with his wife, agreed to purchase 189 cows shown and represented by Simmons. He agreed to pay \$850 per head for a total purchase price of \$160,650.
161. Collins provided the transportation to haul the cows through a separate business he owned with this son-in-law. The transportation cost him \$3,395.
162. Simmons agreed to secure and provide health certificates. Collins never received them.

163. On or about June 29, 2004, Collins gave Simmons a check in the amount of \$76,500. Simmons deposited the money into his B&S Farm checking account. On or about June 30, 2004, Simmons transferred \$71,750 into MJL Cattle's main checking account.
164. Simmons received a \$4,750 commission for arranging the sale of cattle to Collins for Leonard and MJL Cattle.
165. On or about July 8, 2004, Collins gave Simmons a check in the amount of \$84,150 for the remaining balance owed on the cows. Simmons endorsed the check and delivered it to Leonard. On or about July 9, 2004, Leonard signed and deposited it.
166. After the cows were delivered, Collins discovered that many of them were different from the cows he viewed in Missouri. Forty to fifty of the cows were not Black Angus, and many appeared older than represented.
167. The majority of the cows had not calved by mid-November even though Simmons had represented that they would all calve by October 1, 2003. There were a total of 23 open cows. This is indicative that the cows had not been pregnancy checked as represented.
168. By mid-November 2004, 15 older cows with little or no remaining teeth had died. The value of these 15 cows was \$12,740 at \$850 per head.
169. Between November 18, 2004 and December 4, 2004, Collins sold the remaining cows for \$124,300.32. Cattle prices were on the rise from the time he took delivery of the cows. Accordingly, at the time of delivery the value of the cows he received verses the cows he purchased was at least \$36,349.68, not including the 15 old cows that died.
170. The sale barn records did not display the age of all of the cows sold, but indicated that at least 50 cows were broken mouth. This is indicative that the cows had not been aged by a veterinarian as represented by Simmons.

171. Collins testified that at the time of delivery, the difference in the fair market value of cows purchased through a sale barn verses cows that were mostly home raised was \$150 per head for a difference of \$28,350 for 189 cows.
172. Simmons, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. He owned all of the cows and they were mostly all home raised;
 - b. All the cows were between the ages of 4 to 6 years, with a few 7 year olds;
 - c. All the cows had been aged by a veterinarian;
 - d. All the cows would calve by October 1, 2004;
 - e. All the cows had been pregnancy checked;
 - f. All the cows were Black Angus;
 - g. Collins would receive health certificates; and
 - h. He was selling the cows because he and his wife wanted to “cut down” and travel and his mother lived in a house on one of the pastures.
173. Leonard and Simmons, as an agent of Leonard, engaged in the unfair practice actionable under §407.020, of a bait and switch scheme in which Collins was shown cattle of higher quality than many of the cows he received which was designed to induce him to purchase the cows.
174. Simmons, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. Failing to inform Collins that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and

- b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.

175. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 11 violations of §407.020 before, during or after the sale of cows to Consumer Don Collins.

Consumer Robert Lammert

176. Robert Lammert is a resident of Silex, Missouri. He is approximately 37 years old and has been in the cattle business close to twenty (20) years. He operates a cow-calf operation.

177. In August 2003, Lammert responded to an advertisement in the Ad Finder that was paid for by Simmons in his role as a broker for Leonard and MJL Cattle.

178. Toward the end of August 2003, Simmons met Lammert at a truck stop in Boonville, Missouri. Simmons took Lammert to several pastures that were owned or operated by Leonard and MJL Cattle. One pasture was at Ravenswood and Simmons told Lammert that he rented it. This was a material misrepresentation that was designed to deceive Lammert into further believing that Simmons owned the cows and was a reputable seller.

179. Simmons represented that the cows at Ravenswood were bred heifers in their 1st period of pregnancy. Lammert observed approximately 100 cows in the pasture. Simmons further represented that: 1) all the cows had received their vaccinations; 2) they had all been owned by him for some time except that he bought a few at sale barns; and 3) he was selling the cows because he was running low on feed.

180. At another pasture owned or controlled by Leonard and MJL Cattle, Simmons showed

- Lammert additional cows he claimed to own and represented them all to be: 1) of varying ages but no older than 10 years; 2) in their 3rd period of pregnancy; 3) pregnancy checked by a veterinarian; 4) owned by him for a number of years; and 5) vaccinated.
181. On or about August 28, 2003, Lammert, in ownership with his wife, agreed to purchase 140 cows shown and represented by Simmons for a total purchase price of \$107,900. The cows were priced as followed: 1) 50 bred heifers for \$825 per head; 2) 50 cows between the ages of 4 and 7 years for \$785 per head; and 3) 40 cows between the ages of 7 to 10 years for \$685 per head.
182. Simmons agreed to arrange the trucking to haul the cows. Lammert paid trucking costs of \$964.40.
183. On or about August 28, 2003, Lammert paid Simmons a \$107,900 check for the 140 cows made payable to B&S Farms. Simmons endorsed the check and delivered it to Leonard. On or about August 29, 2003, Leonard signed and deposited the check.
184. On or about August 29, 2003, Simmons received a \$3,500 commission check from Leonard and MJL Cattle for arranging the sale of cattle to Lammert. The memo line of the check contained a reference to the word "commission".
185. On or about August 29, 2003, the cows were delivered to Lammert. Upon delivery Lammert noticed that some of the cows appeared older than represented.
186. The 3rd period cattle did not calve as represented. The cows calved between January and April 2004. By the end of November 2003, only 30 of the 90 cows had calved. Thirty-four of the cows were open. This is indicative that the cows had never been pregnancy checked by a veterinarian as represented.
187. Only 15 of the 50 heifers represented as bred calved.

188. Lammert testified that he is not seeking restitution in this matter. However, he hoped his testimony would encourage this Court to make sure that the Defendants are unable to engage in this type of activity in the future so as to prevent future harm to other farmers.
189. Simmons, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. The bred heifers were all in their 1st period of pregnancy;
 - b. The other cows were all in their 3rd period of pregnancy;
 - c. The other cows had all been pregnancy check by a veterinarian;
 - d. He was selling all the cows because he was running low on feed;
 - e. He had owned all the cows for a number of years but bought a few of the bred heifers at sale barns; and
 - f. He rented Ravenswood.
190. Simmons, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. Failing to inform Lammert that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.
191. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 8 violations of §407.020 before, during or after the sale of cows to Consumer Robert Lammert.

Consumer Quality Beef Partnership

192. Quality Beef Partnership is made up of 19 investors out of Salem, Indiana. It was established in 2003.
193. One of the partners, Byron Fagg, is experienced in the cattle industry and served as the spokesperson for the group. He is approximately 58 years old and grew up on a farm. He has been a county extension agent for 28 years and provides advisory services to cattle producers within the State of Indiana.
194. Another partner is Dr. Jerome Rusch. He has been a licensed veterinarian since 1991. In 2000, he became one of thirteen veterinarians in the world to be board certified in beef cattle. He has also served as a sale barn veterinarian since September 1993.
195. In May 2004, the partnership responded to an advertisement in a trade magazine that was paid for by Hackman in his role as a broker for Leonard and MJL Cattle.
196. In May 2004, two of the partners met Hackman at a truck stop off of I-70 near Boonville, Missouri. The partners followed Hackman into a pasture owned or operated by Leonard and MJL Cattle to view a group of cattle.
197. Hackman represented to the partners that all the cows were owned by him and: 1) were between the ages of 5 and 6 years; 2) most were black Semital Angus or black white-faced; 3) had received their vaccinations; 4) were pregnant and would calve between August 2004 and October 2004; 5) would be pregnancy checked and aged before delivery; and 6) had good dispositions.
198. Hackman also represented that all the cows had calved for him before and he was cutting down on his herd size because he had lost some of his pasture. Hackman stated that the farm belonged to his grandfather and he was taking it over. These statements were

material misrepresentations designed to deceive the partners into further believing that Hackman owned the cows and he was a reputable seller.

199. On or about May 26, 2004, some of the partners returned to Missouri to examine the cows. Hackman informed them that the veterinarian had just pregnancy checked and aged the cows. The partners inspected the cows and sorted out the cows they did not want. Hackman assured them that they would not receive any cows with bad udders, bad eyes, or that had Brahma influence.
200. On or about May 26, 2004, the partnership agreed to purchase 40 cows shown and represented by Hackman at \$890 per head for a total purchase price of \$35,600.
201. Hackman did not charge the partners extra to have the cows aged and pregnancy checked which is indicative that this was never done as represented by Hackman.
202. Hackman agreed to secure and send health certificates. The partners received health certificates for the cows that were signed by Dr. McHugh. The examination date on the records was May 22, 2004, and the papers listed Hackman Farms on Highway 5 in Boonville, Missouri as the consignor.
203. On or about May 26, 2004, the partners gave Hackman two checks for \$26,700 and \$8,900 that totaled \$35,600. On the same day Hackman deposited the checks into his Hackman Farms checking account. On or about May 27, 2004, Hackman transferred \$34,000 to Leonard and MJL Cattle's main checking account.
204. Hackman received a \$1,600 commission for arranging the sale of cattle to the partnership for Leonard and MJL Cattle.
205. Upon delivery of the cows, the partners discovered that many of the cows they received were the ones they had previously sorted-off as cattle that the buyers were not willing to

- purchase. The partners paid \$926.20 in trucking charges.
206. After delivery, the partners called Hackman to complain about receiving the cows they had rejected. Hackman hung-up on them and would not return their calls.
 207. On or about June 18, 2004, Dr. Rusch examined the purchased cows. He credibly opined that: 1) 26 were older than 6 years; 2) 5 of the cows had bad dispositions; and 3) 2 of the cows had bad udders.
 208. Byron Fagg testified that the partnership lost \$5,755 in actual losses and \$16,200 in productivity losses.
 209. According to a review of the records filed with the Missouri Department of Agriculture and the USDA, twenty-four cows had been purchased within 3 months of the delivery to the partners. The ages of the tracked cows were as follows: 1) 3 broken mouth; 2) 11 short and solid; 3) 2 that were 7 years old; 4) 2 that were 6 years old; 5) 1 that was 5 years old; 6) 4 that were 4 years old; and 7) 2 that were 3 years old.
 210. Hackman, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
 - a. He owned all of the cows;
 - b. All the cows were between the ages of 5 and 6 years old;
 - c. All the cows had just been aged by a veterinarian;
 - d. All the cows had calved for him before;
 - e. All the cows had been just been pregnancy checked by a veterinarian;
 - f. None of the cows they would receive would have bad udders,
 - g. All the cows had good dispositions; and

- h. He owned all of the cows and was cutting down on his herd size because he had lost some of his pasture and the farm belonged to his grandfather and he was taking it over.
- 211. Leonard and Hackman, as an agent of Leonard, engaged in the following unfair practices actionable under §407.020:
 - a. A bait and switch scheme in which the partners were shown cattle of higher quality than at least half of the cows they received which was designed to induce the partners to purchase the cows; and
 - b. Refusing to address the partner's consumer complaints regarding the condition of the cows they received.
- 212. Hackman, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
 - a. Failing to inform the partners that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.
- 213. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 12 violations of §407.020 before, during or after the sale of cows to Consumer Quality Beef Partnership.

Consumer Jeff Boardman

- 214. In 2003, Jeff Boardman was a resident of Levant, Kansas. He is approximately 35 years old and grew-up on a cow-calf ranch in Wyoming. He started his own cattle ranch in 2002.
- 215. In the Fall of 2003, Boardman responded to an advertisement in the High Plains Journal

- that was paid for by Hackman in his role as a broker for Leonard and MJL Cattle.
216. In August 2003, Boardman met Hackman at the Pilot Truck Stop in Boonville, Missouri. Hackman took Boardman to property owned or controlled by Leonard and MJL Cattle.
217. Hackman told Boardman that he had inherited the farm from his grandfather. This was a material misrepresentation designed to deceive Boardman into further believing that Hackman owned the cows and he was a reputable seller.
218. Hackman represented that all of the cows: 1) were between the ages of 6 and 9 years, solid mouth cows; 2) a veterinarian would verify their ages before delivery; 3) were all in their 3rd period of pregnancy and would calve by December 15, 2004; 4) a veterinarian would pregnancy check them to guarantee pregnancy before delivery; 5) had been owned by him for at least one year and he had rebred them and culled out the bad cows; 6) weighed between 1050 to 1200 pounds; and 7) had no pink eye or foot rot.
219. On or about September 8, 2004, Boardman, in ownership with his wife, agreed to purchase 40 cows shown and represented by Hackman at \$900 per head for a total purchase price of \$36,000. Boardman was not asked to pay extra to have the cows aged and pregnancy checked by a veterinarian which is indicative that Hackman did not have this done as he had represented.
220. Hackman agreed to arrange the trucks to haul the cows. On or about September 8, 2004, the cows plus ten calves were delivered. Boardman paid trucking charges of \$1,125.
221. Hackman agreed to secure and provide health certificates. On or about September 8, 2004, Dr. McHugh signed the health papers for the purchased cows. The health papers indicated that Hackman Farms on Highway 5 in Boonville, Missouri was the consignor.
222. On or about September 8, 2004, Boardman gave Hackman a \$36,000 cashiers check. On

- the same day, Hackman deposited the check into his Hackman Farm checking account and then transferred \$34,000 to MJL Cattle's main checking account.
223. Hackman received a \$2,000 commission for arranging the sale of cattle to Boardman for Leonard and MJL Cattle.
224. Upon delivery, Boardman noted that the cows were not of the same quality and condition as the cows he viewed with Hackman. Many of the delivered cows had rough hair, were thin or emaciated with ribs showing, and appeared older than represented. Some of the cows had pink eye and foot rot. According to Boardman, the cows were an "old rough set of cows."
225. Boardman received 10 calves along with the 40 cows. By December 15, 2004, only six additional cows had calved despite Hackman's representation that all cows would calve by December 15, 2004. Six cows never calved.
226. Many of the calves were in poor health and four died by March 2005.
227. After October 15, 2004, Boardman called Hackman to inform him about his concerns. Hackman offered to replace the cows if Boardman paid the trucking charges for both the old and new cows. Boardman felt uncomfortable releasing the cows because he had just been subjected to numerous material misrepresentations by Hackman, and Boardman was uncertain whether Hackman would actually deliver new cows or deliver quality cows.
228. Hackman later agreed to pay Boardman \$5,000 in compensation for the misrepresented cows. Boardman never received the money and when he called to inquire about the status of it, Hackman informed him that he was not going to pay him and hung up the telephone. Boardman attempted to contact Hackman numerous times, but Hackman refused to answer his telephone.

229. Boardman sold many of the cows and calves over the next several months for a loss.
230. Boardman testified that the fair market value of the cows he received was between \$400 and \$500 per head instead of the \$900 per head he paid for a loss of at least \$16,000.
231. Boardman testified that he would have liked to have known that the cows came from sale barns and from a cattle trader and were generally sorted between the ages of four and short and solid and 2nd and 3rd period and these were material matters for his consideration.
232. Hackman, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. All the cows were between the ages of 6 and 9 years, solid mouth cows;
 - b. A veterinarian would verify their ages before delivery;
 - c. All the cows were in their 3rd period of pregnancy and would calve by December 15, 2004;
 - d. All the cows would be pregnancy checked by a veterinarian to guarantee pregnancy before delivery;
 - e. He had owned the cows for at least one year and he had rebred them and culled out the bad cows;
 - f. All the cows would weigh between 1050 to 1200 pounds;
 - g. None of the cows had pink eye or foot rot; and
 - h. He owned the cows and he had inherited the farm from his grandfather.
233. Leonard and Hackman, as an agent of Leonard, engaged in the following unfair practices actionable under §407.020:
- a. A bait and switch scheme in which Boardman was shown cattle of higher quality than many of the cows he received which was designed to induce him to purchase the cows; and

- b. Refusing to properly address Boardman's consumer complaints regarding the condition of the cows he received.
- 234. Hackman, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
 - a. Failing to inform Boardman that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.
- 235. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 12 violations of §407.020 before, during or after the sale of cows to Consumer Jeff Boardman.

Consumer Cory Wagner

- 236. In 2004, Cory Wagner was a resident of Olmitz, Kansas. He is approximately 26 years old and he grew-up helping his grandparents with their cow-calf operation. In 2003, he owned his own cow-calf operation. He also worked at a feed lot and helped a veterinarian age at least 2,500 cows. Wagner had aged at least 600 cows himself prior to buying cows in Missouri.
- 237. In October 2004, Wagner responded to an advertisement in the High Plains Journal that was paid for by Hackman in his role as a broker for Leonard and MJL Cattle.
- 238. On or about October 8, 2004, Wagner met Hackman at the Pilot Truck Stop in Boonville, Missouri. Hackman took him to view cows on property owned or controlled by Leonard

and MJL Cattle. Wagner viewed approximately 62 cows and sorted out cows he did not want. The cows were videotaped by his girlfriend.

239. Hackman represented all the cows to be: 1) owned by him for at least 3 years and they had all raised a calf every year; 2) they were mostly black and black-white faced; 3) between the ages of 4 and 6 years; 4) all had good eyes and udders; 5) vaccinated each year and current on their vaccinations; 6) all bred to black Angus bulls; and 7) pregnant and would all calve by February 1, 2005.
240. On or about October 8, 2004, Wagner agreed to purchase 53 cows shown and represented by Hackman for \$885 per head for a total purchase price of \$46,905. He also agreed to pay an additional \$100 per head to have a veterinarian pregnancy check the cows so that he was guaranteed that they were all pregnant and would calve by February 1, 2004. Wagner paid a total of \$52,205 for the cows.
241. Hackman agreed to secure and send health certificates. Wagner received health certificates but the signature date of Dr. McHugh's signature was October 10, 2004, which is after the cows had already been delivered to Wagner. This would indicate that the veterinarian used by defendants Hackman and Leonard falsely certified an examination of the cattle. In addition the certificates inconsistently listed the total number of cows as 45 and 48 and not 53. The certificates indicated the consignor to be Hackman Farms on Highway 5 in Boonville, Missouri.
242. On or about October 8, 2004, Wagner wired transferred money to Hackman's checking account. Wagner took delivery of the cows the same day. On the same day, Hackman transferred \$50,350 to MJL Cattle's main checking account.
243. Hackman received a \$1,855 commission for arranging the sale of cattle to Wagner for

Leonard and MJL Cattle.

244. Wagner hauled 11 cows back to his farm in his own trailer. The remaining cows were loaded several hours later into a truck after the wire transfer was confirmed by Hackman. Wagner was not present to view the loading of the remaining cows.
245. Wagner paid \$888.30 in trucking expenses.
246. After delivery, Wagner observed that some of the cows were not the same as the ones he agreed to purchase. He also observed that he received some of the cows he had specifically sorted-off and was not willing to buy, which was agreed to by Hackman.
247. Some of the cows had freeze and hot brands on them that were not present on the cows Wagner viewed in Missouri. Some cows were smaller and skinnier and some had bad eyes, bad udders and/or appeared older than the cows he agreed to purchase. A few of the cows had bad dispositions. Wagner testified that many of the cows were switched on him and appeared to be “thrown together cows.”
248. The cows’ bang tags indicated that the cows came from at least seven different states. Twenty-two of the bang tag numbers listed on the health certificates corresponded to the tags in the cows’ ears. Fourteen cows had no bang tags.
249. On the evening of October 8, 2004, Wagner called Hackman to inform him that the health papers did not match the cows he received and some of the cows were not what he had agreed to purchase. Hackman stated that he must have sent the wrong paperwork. Hackman was at a location in which it was difficult to hear and told Wagner to call him in the morning.
250. Wagner was unable to reach Hackman until on or about October 27, 2004. Wagner told Hackman about his concerns and that one of the cows had produced an unexpected

- yellow calf. Hackman told Wagner that his neighbor's bull must have jumped the fence.
251. Several of the cows produced calves of varying colors, including yellow, tan, white, red and white faced and some with Hereford influence. Twenty-two of the calves were colored and twenty-eight were black. This is indicative that Hackman did not know the type of bull to which these cows were bred as is often the case with sale barn cows.
252. The cows calved from October 27, 2004 until May 27, 2005. Eighteen cows calved early than represented. Twenty-five cows calved during the represented time period and seven cows calved late or after April 1, 2007. The last cow calved on May 27, 2005.
253. One cow would not get up at the time of delivery and died approximately four days later. She had a sewn prolapse that had caused scar tissue and impaction. Another cow delivered a stillborn calf and one cow was open. Another cow only weighed 850 pounds and produced a calf that weighed only 36 pounds.
254. On or about May 3, 2005, Wagner aged the cows and found 29 of them were older than 6 years and 5 of them were broken mouth.
255. Wagner again called Hackman to complain about the condition of the cows and calves. Hackman told Wagner that he did not want to speak with him and hung-up the telephone.
256. Wagner testified that on average the fair market value of the cows he received at the time of delivery was \$600 per head instead of the purchase price of \$885 per head for a difference of \$285 per head for a total of \$15,105 for 53 cows.
257. The calving rate of the cows is not indicative of them having been pregnancy checked by a veterinarian which cost Wagner an additional \$100 per head for a total of \$5,300 for 53 cows.
258. Wagner testified that he would not have purchased the cows if he knew they were sale

barn cows or were owned by a cattle trader. He would not have bought them if he knew they were sorted between the ages of four and short and solid or 2nd and 3rd period cows grouped together.

259. Wagner testified that he reasonably expected to net a profit of \$200 per calf for all 53 Missouri cows that were guaranteed pregnant by Hackman for a total of \$10,600. He testified that he could have reasonably expected an average price of \$600 per calf at market and would have incurred expenses of an average of \$350 to \$400 per cow-calf pair to bring the calf to market, including between \$1.10 to \$1.20 per day per cow in feed.
260. According to a review of records filed with the Missouri Department of Agriculture and the USDA regarding the purchased cows, Plaintiff was able to track ten of the purchased cows through bangs tags. Nine of the cows had been sold at a sale barn within two months of delivery to Wagner. Of these nine cows: 1) five were aged at the sale barn as short and solid; 2) two were aged at the sale barn as age seven; 3) five were classified as being in their 1st period of pregnancy and 4) one was classified as 2nd period.
261. Hackman, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. He had owned all the cows for at least three year and they had all raised a calf every year;
 - b. All the cows had been vaccinated each year and were current on their vaccinations;
 - c. All the cows were between the ages of 4 and 6 years old;
 - d. All the cows had good eyes and udders;

- e. All the cows were bred to Black Angus bulls;
 - f. All the cows were pregnant and would all calve by February 1, 2005;
 - g. All the cows would be pregnancy checked for an additional payment of \$100;
 - h. Wagner would receive proper health certificates for the cows; and
 - i. His neighbor's bull must have jumped the fence.
262. Leonard and Hackman, as an agent of Leonard, engaged in the following unfair practices actionable under §407.020:
- a. A bait and switch scheme in which Wagner was shown cattle of higher quality than many of the cows he received which was designed to induce Wagner to purchase the cows; and
 - b. Refusing to address Wagner's consumer complaints regarding the condition of the cows he received.
263. Hackman, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. Failing to inform Wagner that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.
264. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 13 violations of §407.020 before, during or after the sale of cows to Consumer Cory Wagner.

Consumer Kenneth Schaffer

265. Kenneth Schaffer is a resident of Hoxie, Kansas. He is approximately 54 years old and

- has worked with cattle all his life. He maintains a cow-calf operation.
266. In August 2004, Schaffer responded to an advertisement in the High Plains Journal that was paid for by Hackman in his role as a broker for Leonard and MJL Cattle.
267. Schaffer called the number on the advertisement and spoke with Hackman. Hackman represented all the cows to be: 1) solid mouth or younger; 2) owned by him for approximately one year and he had raised calves off of them; 3) bred to black Angus bulls; and 4) in their 2nd and 3rd period of pregnancy and they would be done calving by the end of December 2004.
268. On or about September 1, 2004, Schaffer's brother, Willie Schaffer, met Hackman at the Pilot Truck Stop in Boonville, Missouri. Hackman took him to view the cows on property owned or controlled by Leonard and MJL Cattle. Willie Schaffer viewed approximately 100 cows, and was told by Hackman that the cows were between the ages of 4 and 6 years. He did not see any calves. Willie Schaffer is knowledgeable about the cattle industry.
269. Willie Schaffer informed his brother that the cows were what he was looking for in a cattle herd.
270. On or about September 7, 2004, Schaffer agreed to purchase, in ownership with his wife, 80 cows shown to his brother and represented to him by Hackman at \$975 per head for a total purchase price of \$78,000.
271. Hackman agreed to pregnancy check the cows; however, he did not charge Schaffer extra for this service which is indicative that the cows were never checked.
272. Hackman agreed to secure and send health certificates. Schaffer received health certificates signed by Dr. McHugh. The signature date on the certificates was September

- 12, 2004, which was after the date of delivery. The papers indicated the seller of the cows were Hackman Farms on Highway 5 in Boonville, Missouri.
273. Hackman agreed to arrange the trucks to haul the cows. Schaffer paid \$2,093 in trucking charges.
274. On or about September 7, 2004, Schaffer wire transferred \$78,000 to Hackman Farm's checking account. On or about September 8, 2004, Hackman transferred \$76,000 to MJL Cattle's main checking account.
275. Hackman received a \$2,000 commission for arranging the sale of cows to Schaffer for Leonard and MJL Cattle.
276. On or about September 9, 2004, Hackman telephoned Schaffer and stated that ten of the cows had calved and he wanted to know if Schaffer wanted the calves. Schaffer commented that it was early for the cows to be calving but he would take the calves if they were healthy.
277. On or about September 11, 2004, the cows and calves were delivered.
278. At the time of delivery, 25% to 30% of the cows were not as represented by Hackman and not of the quality observed by Willie Schaffer. Many of the cows were thin, two were crippled and one had a hump on it from an old injury. Some had Brahma influence and one was a Blue Roan cow with no teeth.
279. Schaffer reliably aged the cows himself and determined that: 1) 5 were broken-mouth; 2) 11 were short and solid; and 3) 53 were solid mouth, as represented.
280. The ten calves that were delivered appeared to be three to four weeks old which is contrary to what Hackman told Schaffer.
281. Six of the ten cows that came with calves died within two or three days of delivery.

Schaffer's veterinarian was out of town and unable to examine them. Two more cows died by October 2004.

282. The cows began to calve and two calves died.
283. In October 2004, Dr. Mark Poell examined one sick cow and diagnosed her with anaplasmosis. He recommended that the entire herd be treated for the disease for 60 days.
284. In April 2004, Dr. Poell took blood from 72 of the cows and determined that 20 were still positive for anaplasmosis and eight were suspicious of having it.
285. Schaffer kept the purchased cows away from his other 250 cows. None of his other cows became infected with anaplasmosis.
286. Independent of the anaplasmosis and the representation that the cows had been on Hackman's farm for one year and calved, Schaffer testified that the value difference in the 25% to 30% of the cows that were misrepresented by Hackman was \$200 per head for a loss of at least \$4,000 at the time of delivery.
287. Schaffer testified that at the time of delivery the value difference between sale barn cows and cows that had been on one's property for at least one year and all calved was between \$150 and \$200 per head for a difference of at least \$12,000 for 80 cows.
288. Schaffer paid \$708 in veterinarian expenses for diagnosing and treating the cows for anaplasmosis.
289. Shaffer testified that he would have wanted to know if he was buying sale barn cows or cows from a cattle trader. He would have liked to have known if the trader grouped his cows into ages of four years to short and solid and grouped 2nd and 3rd period cows together. These were material matters for his consideration.

290. The reason Schaffer did not want to purchase sale barn cows and sought cows from someone he thought had owned the cow for awhile was to avoid experiencing similar health problems as he experienced with the purchased cows.
291. Hackman, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. All of the cows were solid mouth or younger;
 - b. He had owned all of the cows for approximately one year and had raised calves off of them;
 - c. All the cows were bred to black Angus bulls;
 - d. Ten of the cows had just calved; and
 - e. All of the cows would be pregnancy checked before delivery.
292. Leonard and Hackman, as an agent of Leonard, engaged in an unfair practice actionable under §407.020, of a bait and switch scheme in which Willie Schaffer was shown cattle of higher quality than 25% to 30% of the cows Schaffer received which was designed to induce him to purchase the cows.
293. Hackman, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. Failing to inform Schaffer that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.

294. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 8 violations of §407.020 before, during or after the sale of cows to Consumer Kenneth Schaffer.

Consumer Robert Sager

295. In 2004, Robert Sager was a resident of Stanberry, Missouri. He is approximately 32 years old and he grew up on a farm and has remained in the cattle business all his life. He has maintained a cow-calf operation for 13 years.

296. In August or September 2004, Sager responded to an advertisement in the High Plains Journal that was paid for by Hackman in his role as a broker for Leonard and MJL Cattle.

297. On or about September 17, 2004, Sager met Hackman at the Arby's Restaurant in Boonville, Missouri. Hackman took Sager to view cows on property owned or controlled by Leonard and MJL Cattle. Hackman told Sager that the property was his grandmother's farm. This statement was untrue and constituted a material misrepresentation and was designed to deceive Sager into further believing Hackman owned the cows and he was a reputable seller.

298. Sager observed approximately 55 well maintained cows.

299. Hackman represented all of the cows to be: 1) between the ages of 3 to 8 years; 2) in their 3rd period of pregnancy and would calve October 1 2004 through January 1, 2005; 3) pregnancy checked; 4) vaccinated and dewormed; 5) black and bred to black bulls; and 6) purchased by him from Southern Missouri 3 years ago and they had all calved for him.

300. On or about September 17, 2004, Sager, in ownership with this wife, agreed to purchase 45 cows shown and represented by Hackman at \$975 per head for a total purchase price of \$43,875.

301. Hackman agreed to arrange trucking to haul the cows. Sager paid \$437 in trucking fees.
302. On or about September 21, 2004, Sager observed the cows being loaded and paid Hackman \$43,875. On or about September 22, 2004, Hackman deposited the money into his Hackman Farms checking account and the same day transferred \$42,750 to Leonard and MJL Cattle's main account.
303. Hackman received a \$1,125 commission for arranging the sale of cattle to Sager for Leonard and MJL Cattle.
304. The majority of the cows did not calve as represented. This is indicative that Hackman did not have the cows pregnancy checked as he represented.
305. The first cow calved on September 23, 2004, and thereafter: 1) by September 30, 2004, two additional cows had calved; 2) by October 31, 2004, no additional cows had calved; 3) by November 30, 2004, three or four more cows had calved; 4) by December 31, 2004, two or three more had calved; 5) by January 31, 2005, five or six more had calved; 6) by February 28, 2005, eighteen to twenty additional cows had calved; 7) by April 30, 2005, ten more had calved; and 8) the last cow to calve was on May 20, 2005.
306. Only half of the calves were black and the other half unexpectedly varied in color including, red, red-white face, white, brown, and chocolate colored. This is indicative that Hackman did not know the breed of the bull to which the cows were bred which is commonly the case with sale barn cows.
307. Per Segar's reliable inspection of the cows, some of them were older than represented, including some broken mouth and gummers.
308. The cows calved over four months longer than represented. This caused the Sagers not have adequate numbers of calves to sell to pay his loan payment.

309. Sager would have liked to have known he was buying cows that belonged to a cattle trader. He was not interested in sale barn cows. He wanted cattle that came from a source that knew the herd, calving, vaccination and disease history. He was not interested in cattle grouped from four years to short and solid because he did not want cattle that old. Also, he was not interested in 1st period cattle or cattle grouped into 2nd and 3rd period. These were material matters for his consideration.
310. Sager testified that at the time of delivery the fair market value of the cows he received was \$725 per head instead of the purchase price of \$975 per head. This is a difference of \$11,250 for 45 cows. This does not include the value difference between cows from a sale barn verse cows from a single source.
311. Sager placed a premium of \$50 per head for cows that came from a single source wherein the person had owned them for three years verses sale barn cows and this amounts to a difference in value of \$2,250 for 45 cows.
312. Hackman, based on direct information he received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. All the cows were between the ages of 3 to 8 years;
 - b. All of the cows were in their 3rd period of pregnancy and would calve October 1, 2004 through January 1, 2005;
 - c. All the cows had been pregnancy checked;
 - d. All the cows were bred to black bulls;
 - e. All the cow had been purchased by him from Southern Missouri three years ago and they had all calved for him; and
 - f. The property belonged to his grandmother.

313. Hackman, based upon directions he received from Leonard, made the following material omissions actionable under §407.020, while acting within the scope of his agency relationship with Leonard and MJL Cattle:
- a. Failing to inform Sager that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.
314. Accordingly, Defendants Leonard and MJL Cattle, through their own acts and the acts of their agent, committed 8 violations of §407.020 before, during or after the sale of cows to Consumer Robert Sager.

Consumer Gary Sevenans

315. Gary Sevenans is a resident of Council Grove, Kansas. He is approximately 59 years old, and has been in the cattle business for over twenty (20) years. He operates a cow-calf operation.
316. At all times herein relevant, Peggy Morrow conducted all of her cattle operations within a partnership with her son, Lance Neff, and through the fictitious name of "Straight A Cattle Company."
317. Neff and Morrow, through Straight A Cattle Company, engaged in the cattle market as independent contractors as well as agents for defendants MJL Cattle Co. LLC and Mitchell Justin Leonard, known as "traders" by conducting themselves in the cattle operation of buying cows and calves for subsequent re-sale.
318. Lance Neff was also in partnership with David Kruger and did business through the legal entity of "D&L Farms, Inc." which purpose was primarily row cropping and,

- peripherally, purchasing cows through livestock auctions and then re-selling cattle.
319. Lance Neff was also in partnership with Justin Heinzler and James Ristler which purpose was primarily purchasing, backgrounding (i.e. fattening) and selling cows and calves.
 320. Straight A Cattle Company purchased cows and/or calves from MJL on or between 2003 and 2004 in a total amount of \$602,030.00.
 321. Straight A Cattle Company purchased cows and/or calves from Marshall Livestock Auction on or between 2003 and 2004 in a total amount of \$490,217.61.
 322. Straight A Cattle Company, purchased cows and/or calves from Justin Heinzler in 2004 in a total amount of \$200,793.11.
 323. Straight A Cattle Company, purchased cows and/or calves from Chris Jones on or between 2003 and 2004 in a total amount of \$99,000.00.
 324. Straight A Cattle Company purchased cows and/or calves from D&L Livestock on or between 2003 and 2004 in a total amount of \$35,789.42.
 325. Straight A Cattle Company maintained a cattle-working facility at a location near Napton, Missouri capable of holding and sorting and loading/unloading at least 200 cows at any given time on or between 2003 and 2004.
 326. On or about October 13, 2003, Sevenans responded to an advertisement in the High Plains Journal paid for by Morrow and Neff in their role as brokers for Leonard and MJL Cattle.
 327. On or about October 21, 2003, Sevenans traveled to Missouri to meet with Morrow. Sevenans initially met Morrow at Marshall Livestock Auction at which time Neff was loading poor quality cattle for delivery to McCook, Nebraska for Consumer Tyler Hills.
 328. Morrow took Sevenans to land owned or controlled by Leonard and MJL Cattle near

New Franklin, Missouri.

329. Sevenans viewed two separate pastures of cows. The cows in the first pasture were thin and not of the quality in which he was interested. The cows in the second pasture were suitable to Sevenans in that they were fleshier, black or black baldy cows, appeared in good health, had no horns and appeared to be younger in age.
330. Morrow represented the cows in the second pasture to all be: 1) ages 7 to 9 years, and no broken mouth cows; 2) pregnant and primarily in their 2nd period of pregnancy; 3) vaccinated; 4) black or black baldy cows that were bred to Gardner Angus Bulls; 5) 90% home raised from calves by Morrow and 10% were purchased as replacement heifers; and 6) no bad eyes, no horns, no bad udders or long ears which indicates Brahma influence.
331. Morrow also stated that she owned the cattle and rented the pasture and she wanted to sell the cows because she was short on feed. These statements were material misrepresentations designed to deceive Sevenans into further believing that Morrow and Neff owned the cows and they were reputable sellers.
332. Morrow informed Sevenans that health certificates were unnecessary.
333. While driving from the first to the second pasture, Sevenans observed additional cows being loaded onto trucks. He inquired whether these were more cows being shipped to McCook, Nebraska. Morrow said yes.
334. On or about October 21, 2003, Sevenans agreed to purchase 80 cows shown and represented by Morrow at \$650 per cow for a total purchase price of \$52,000. Morrow told Sevenans that she would “sort hard” when picking out the cattle for delivery.
335. Morrow agreed to arrange the trucks to haul the cows. Sevenans paid \$1,064.40 to have

- the cows shipped from New Franklin, Missouri.
336. On or about October 21, 2003, Sevenans wired \$52,000 to Straight A Cattle bank account.
337. Between October 21, 2003 and October 31, 2003, according to Defendant's Exhibit No. "43", \$103,725 from various sources, including the \$52,000 from Sevenans was deposited into the Straight A Cattle account of Morrow and Neff at Alliant Bank.
338. On or about October 31, 2003, \$49,520 was transferred from Straight A Cattle account to Leonard and MJL Cattle's main checking account.
339. The cattle were delivered on November 3, 2003.
340. The court is unable to definitively determine from the evidence presented, the exact amount of commission that was paid to defendants Morrow and Neff by defendants Leonard and MJL Cattle Co. LLC, for this particular transaction, for the reason that during this time Morrow and Neff purchased cows not only from MJL Cattle Co. LLC, but from third parties and in which defendants MJL Cattle Co. LLC and/or defendant Leonard had no interest.
341. Upon delivery, Sevenans observed that the cows were of less quality than the cows he viewed in Missouri and he agreed to purchase. The cows were older and thinner. Some of the cows possessed horns and brand marks. All the cows possessed different ear tags than the cows he observed in Missouri. Sevenans testified that all the cows were cull cows that typically went to slaughter.
342. Sevenans has used the veterinary services of Dr. Tom Jernigan for approximately twenty years. Dr. Jernigan has been a licensed veterinarian since 1979.
343. On or about November 7, 2003, Dr. Jernigan examined 78 of the purchased cows, and

credibly opined that they ranged in ages from age 4 to gummers and there were 7 open cows. He further opined that the cows were in need of feed going into the winter, and if he owned them then most of them would have been culled.

344. On or about November 10, 2003, Sevenans returned to Missouri and made a complaint to the Saline County, Cooper County and Howard County Sheriff's Departments.
345. While Sevenans was speaking with the Howard County Sheriff, Charlie Polson, the Sheriff determined the pasture on which Sevenans viewed the cattle with Morrow was owned by Leonard's mother.
346. Sheriff Polson telephoned Leonard and inquired as to his knowledge of Morrow and whether she was showing cattle on land owned by his mother. Leonard denied knowing Morrow and having any knowledge of Morrow showing cattle on his mother's land. Sheriff Polson then put Sevenans on the telephone and Leonard again denied knowing Morrow and stated that she had no business being on his land. Leonard later admitted that these statements were false. These statements were material misrepresentations made by Leonard that were designed to deceive the Sheriff and Sevenans into believing he was not involved in the cattle transaction.
347. On November 11, 2003, Sevenans tried to contact Morrow without success. He left messages for her to call him and she never returned the telephone calls.
348. On or about November 17, 2003, Dr. Paul Grosdidier examined 79 of Sevenans' cows. One cow had already died. Dr. Grosdidier has been a licensed veterinarian since 1991.
349. Dr. Grosdidier worked for the Kansas Animal Health Department and examined Sevenans cows after Sevenans called the Department to report that he had received different cows than the ones he had purchased. Dr. Grosdidier testified that he was

- required to examine the cows since they entered Kansas without health certificates.
350. Dr. Grosdidier credibly opined that 19 of the cows were short and solid or better and the remaining 60 cows “were all old cows with broken mouths, or very short teeth, and certainly appeared to have been older than 9 years of age.” He opined that some of the cows were 14 to 17 years old based upon their calf hood vaccination tattoos. Dr. Grosdidier also noted that the cows had bang tags from eight different states and many of the tags appeared new in that they were shinny and the cows’ ears were still festering.
351. Dr. Grossdidier informed Sevenans that in his expert opinion the vast majority of the cows were very old cows that had been purchased at various sale barns essentially as killers and he would be reluctant to spend any more money on them unless it was needed to keep them alive.
352. According to a review of the records filed with the Missouri Department of Agriculture and the USDA regarding the purchased cows, 58 of them were purchased from sale barns after Sevenans wired his funds to Morrow on October 21, 2003.
353. According to the same records: 1) 29 were linked to MJL Cattle; 2) 21 were linked to Allen Bixenman who was associated with Eddie Foster who was a cattle buyer for Leonard and MJL Cattle; and 3) the remaining cows had no buyer information associated with them but several were sold at Livestock Auctions in which Straight A Cattle bank account showed no connection.
354. The court therefore finds that 29 of the 80 cows purchased by Gary Sevenans were cattle sold by Morrow and Neff doing business as Straight A Cattle Co. on behalf of and as agents for defendants MJL Cattle Co. LLC and Leonard. The remainder of the cows was sold by defendants Morrow and Neff independently, doing business as Straight A Cattle

- Co. and not as agents of MJL Cattle Co. LLC and Leonard.
355. Therefore the percentage of this sale is attributed as follows: 29 of 80 cows or 36% - as agents of defendants, MJL Cattle Co. LLC and Leonard: 51 of 80 or 64% - independently by defendants, Morrow & Neff doing business as Straight A Cattle Co.
356. Sevenans contacted several governmental officials, including the USDA, and was instrumental in arranging several meetings with other governmental officials including the Missouri Attorney General's Office and the USDA and other farmers who had purchased cattle from Defendants who were unhappy with the cattle they received.
357. On or about November 28, 2003, Sevenans sold his remaining 79 cows to mitigate his damages to a meat packer for a gross profit of \$40,166 and a net profit of \$39,075, after transportation was deducted for a loss of \$12,925.
358. Sevenans testified that he reasonably expected to receive 78 calves from the purchased cows and earned a net profit at the time of sale of \$375 per calf for a total of \$29,250.
359. Per Sevenans, the difference between the fair market value at the time of delivery of the cows he received and the cows he should have received was \$200 per head for a total of \$16,000 for 80 cows.
360. Sevenans would have liked to have known he was buying cows that belonged to a cattle trader. He was not interested in sale barn cows. He wanted cattle that he knew the herd history and vaccinations and disease history. He was not interested in cattle grouped from 4 years old to short and solid. These were material matters for his consideration.
361. Morrow, based on direct information she received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of her agency relationship with Leonard and MJL Cattle:

- a. All the cows were 7 to 9 years old, and not broken mouth;
 - b. All the cows were pregnant and primarily in their 2nd period of pregnancy;
 - c. All the cows were bred to Gardner Angus Bulls;
 - d. All the cows were 90% home raised from calves by Morrow and 10% were purchased as replacement heifers;
 - e. None of the cows had horns;
 - f. Her and her son owned all the cows and rented the ground on which they were located and she wanted to sell them because she was short on feed;
 - g. Sevenans did not need health certificates; and
 - h. She would “sort hard” when loading the cows.
362. After the sale of cows to Sevenans, Leonard misrepresented to Sheriff Polson and Sevenans that he did not know Morrow and she did not have permission to show cattle on his land, which is an actionable misrepresentation under §407.020, RSMo.,
363. Morrow, based upon directions she received from Leonard, made the following material omissions actionable under §407.020, RSMo., while acting within the scope of her agency relationship with Leonard and MJL Cattle:
- a. A bait and switch scheme in which Sevenans was shown cattle of higher quality than at many of the cows he received which was designed to induce him to purchase the cows; and
 - b. Refusing to address Sevenans’ consumer complaints regarding the condition of the cows he received.
364. Morrow, based upon directions she received from Leonard, made the following material omissions actionable under §407.020, RSMo., while acting within the scope of her agency relationship with Leonard and MJL Cattle:
- a. Failing to inform Sevenans that Leonard and MJL Cattle owned at least 36% of

the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and

- b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.

365. The court specifically finds that the entire herd of cows sold to Sevenans by defendants, Morrow and Neff, are representative of the misrepresentations as above set forth, including the 36% of the herd sold to Sevenans by Morrow and Neff as agents on behalf of defendants, Leonard and MJL Cattle Co. L.L.C.
366. Defendants Leonard and MJL Cattle and Morrow and Neff, through their own acts and the acts of their agents, committed 13 violations of §407.020 before, during or after the sale of cows to Consumer Gary Sevenans.

Consumer Job Keltner

367. In 2004, Job Keltner was a resident of Wapalo, Iowa. He is approximately 68 years old and he has been around farming and cattle all of his life. He is self-employed as a farmer and he maintains a cow-calf operation. In 2004, he had 200 head of cattle and was interested in expanding his herd because he and some partners acquired pasture land in Unionville, Missouri.
368. In January 2004, Keltner responded to an advertisement that was paid for by Morrow and Neff.
369. In January 2004, Keltner and one of his partners met Neff south of I-70 and were taken to Ravenswood, a farm in which defendant Justin Mitchell Leonard had an interest. Neff informed the gentlemen that his mother owned the cows and leased the property and he

- showed the men three different groups of cattle. He said his mother was selling out the herd. These statements were material misrepresentations designed to deceive Keltner into further believing that Morrow owned the cows and she was a reputable seller.
370. Neff informed the men that all of the cattle were: 1) age 4 to 8 years, with the majority of them being between the ages of 4 and 5 years; 2) home raised from birth on the farm; 3) in their 3rd period of pregnancy; and 4) owned by Straight A Cattle.
371. The cows appeared to Keltner to have “good flesh” and had a gentle demeanor. During the site visit, Keltner agreed to purchase 300 cows shown and represented by Neff for \$600 per head for a total purchase price of \$180,000. Keltner paid Neff a down payment check of \$45,000 on January 13, 2004.
372. Keltner drafted a purchase agreement and Neff left and came back with a signature that read Morrow. However, Morrow testified that it was not her signature on the document.
373. It was agreed that Keltner would take delivery of the cows within a couple of months.
374. On or about January 27, 2004, Morrow and Neff transferred \$34,500 to MJL Cattle’s main checking account.
375. By April 2004, Keltner inquired into the delivery of the cows and was informed that Neff was farming and could not load the cows at that time. Around this same time, Keltner’s partners traveled back to Ravenswood and observed what appeared to be the same cows.
376. Keltner spoke with Morrow some time after April 2004. She informed him that there was a legal dispute as to the cattle and she was trying to work it out. On or about May 5, 2004, in response to her conversation with Keltner, Morrow wrote him a

check from her personal checking account for \$45,000. She asked him to hold the check for 60 days so she could try to work out the legal issues.

377. On or about July 7, 2004, Keltner had his attorney draft a contract that was signed by him and Neff and Morrow, as representatives to Straight A Cattle. According to the contract, the cattle were to be delivered within 60 days.
378. Keltner and his partners never received the cows, and Keltner never received his \$45,000.
379. On or about August 20, 2004, Morrow placed a stop payment on her check. Morrow and Neff stopped taking Keltner's telephone calls.
379. Neff made the following material misrepresentations actionable under §407.020;
- a. All of the cows were 4 to 8 years old, with the majority of them being between the ages of 4 and 5 years;
 - b. All the cows were home raised from birth on the farm;
 - c. All the cows were in their 3rd period of pregnancy;
 - d. All the cows were owned by Straight A Cattle;
 - e. If Keltner paid a down payment of \$45,000 he would receive 300 cows shown and represented to him;
 - f. Morrow leased the pasture and his mother was selling out the herd; and
 - g. His mother had signed the purchase agreement.
380. Morrow made the following material misrepresentations actionable under §407.020;
- a. There was in a legal dispute regarding the cows and the cows could not be delivered at that time; and
 - b. She would return his \$45,000 down payment.
381. Morrow and Neff engaged in the following unfair practices actionable under

§407.020, when:

- a. Morrow and Neff failed and refused to address Keltner's consumer complaints;
- b. Morrow and Neff failed and refused to return Keltner's money or deliver the cows;
and
- c. Morrow and Neff entered into a contract with Keltner that they did not intend to honor.

382. Accordingly, Defendants Morrow and Neff, through their own independent acts committed 12 violations of §407.020 before, during or after the sale of cows to Consumer Job Keltner.

383. The court does not find that sufficient evidence has been presented by plaintiff to connect defendants Mitchell Justin Leonard or MJL Cattle Co. LLC to this transaction.

Consumer Tyler Hills

384. Tyler Hills is a resident of Colby, Kansas. He is approximately 35 years old and has been in the farming business all his life. He grew up around cattle. He works for his family's feed lot business, H & H Farms, as a feed yard manager. He began purchasing cows on his own in high school. He maintains his own cow-calf operation.

385. In 2003, H & H Farms was looking to purchase cattle for a cow-calf operation. Hills was assigned the job of locating and arranging the purchase of the cows.

386. In October 2003, Hills viewed an advertisement in the High Plains Journal paid for by Morrow and Neff in their role as brokers for Leonard and MJL Cattle.

387. Hills called the telephone number from the advertisement and spoke with Morrow. She

told Hills that she had over 1000 cows for sale and she was selling them due to a drought in the area. This statement was a material misrepresentation designed to deceive Hills into further believing Morrow owned the cows and she was a reputable seller.

388. Morrow told Hills that her son and her were partners conducted business as Straight A Cattle.
389. Morrow further stated that the cows were all: 1) 95% home raised with 5% being purchased as heifers; 2) 10% were 3 years old, 80% were 4 to 6 years old, 10% were 7 to 8 years old and 100% were 8 years or younger; 3) black baldies; 4) in their 3rd period of pregnancy and would calve between mid-October 2003 to mid-December 2003; 5) were pregnancy checked; 6) vaccinated; and 7) bred to Gardiner Angus bulls.
390. On or about October 14, 2003, Morrow emailed approximately 12 colored photographs of groups of cows that she claimed were a representative sample of all the cows for sale. The cows in the photographs appeared to have good body condition and did not appear to have wide muzzles which can indicate older cows.
391. On or about October 15, 2003, Hills agreed to purchase, on behalf of H&H Farms, 400 cows represented by Morrow at \$820 per head for a total purchase price of \$328,000.
392. Hills was not asked to pay extra to have the cows aged or pregnancy checked which is indicative that Morrow did not have it done as she represented.
393. Morrow agreed to secure and send health certificates. Hills never received them.
394. On or about October 15, 2003, Hills wire transferred a down payment in the amount of \$49,200 to Straight A Cattle's checking account. On or about October 16, 2003, Morrow and Neff transferred \$35,000 into MJL's main checking account.
395. On or about October 20, 2003, the cows were delivered. Prior to delivery, Hills paid

Straight A Cattle \$278,800. On or about October 20, 2003, Morrow and Neff transferred \$28,125, \$58,000 and \$175,875 into MJL's main checking account.

396. Morrow and Neff used some of the purchase money to buy additional cattle needed to fill H & H Farm's large order because Leonard and MJL cattle did not have enough cows on hand. Consumers Kell, Hills and Messersmith all purchased cows around the same time.
397. Hills arranged the trucks to haul the cows. H & H Farms paid \$11,440 in trucking charges. The trucking invoices indicated the cows were hauled from Boonville, Missouri to McCook, Nebraska.
398. Hills was present when the cows were unloaded. He immediately noted that many of the cows appeared to be "cull" and "junk" cows and were thin with poor body condition. Many appeared to be older than represented, had bad udders, hundreds of them had numerous brands on them and back tags or signs that back tags had recently been removed. Some of the cows were the wrong breed. He videotaped the cows the next day.
399. Hills immediately called Morrow and Neff. Morrow hung-up on him and Neff never answered his telephone.
400. Five cows died within the first week of delivery due to poor health.
401. On October 21, 2003, Dr. Jason Osterstock examined the purchased cows. He has been a licensed veterinarian since 2001.
402. Dr. Osterstock credibly opined that: 1) 134 cows were broken mouth which are generally over the age of 9 years; 2) 160 cows were short and solid, which is generally between the ages of 7 to 9 years; 3) 89 cows were solid mouth cows which is generally between the ages of 5 to 6 years; 4) 17 cows were 4 years or less; and 5) approximately 82 were not in

their 3rd period of pregnancy. Approximately 30 cows were open. This is indicative that the ages of the cows were misrepresented, and Morrow and Neff did not have a veterinarian pregnancy check the cows as Morrow represented.

403. Dr. Osterstock credibly opined that he is 90% accurate in terms of estimating the length of gestation, within two weeks of his estimate. He determined that the purchased cows varied in length of pregnancy from one to eight months with most of them being in their sixth month of pregnancy. He also opined that the cows were thinner than normal and he observed evidence of recently removed back tags and multiple brand marks on many cows.
404. H & H Farms paid Dr. Osterstock \$2,700 to examine the cows.
405. According to a review of the records filed with the Missouri Department of Agriculture and the USDA, out of 400 cows as many as 305 could be tracked. Of the 305 cows: 1) at least 70 were sold at sale barns as broken mouth cows prior to their delivery to Hills; 2) at least 70 were purchased at sale barns after Hills paid his down payment; 3) at least 180 were purchased within three months of delivery to Hills; 4) at least 110 were open within a few months of delivery; and 5) the bang tags originated in at least eleven different states.
406. According to these same records: 1) 161 cows were linked to defendants, Leonard and MJL Cattle; 2) 80 cows were linked to D&L Farms; 3) 1 cow was linked to Chris Jones and 4) the remaining cows had no buyer information associated with them or were associated with unknown buyers; however, several cows were sold at Livestock Auctions with which Straight A Cattle bank account shows no connection.
407. The court therefore finds that 161 of the 400 cows purchased by Tyler Hills were cattle

sold by Morrow and Neff doing business as Straight A Cattle Co. on behalf of and as agents for defendants MJL Cattle Co. LLC and Leonard. The remainder of the cows were sold by defendants Morrow and Neff independently, doing business as Straight A Cattle Co. and not as agents of MJL Cattle Co. LLC and Leonard.

408. Therefore the percentage of this sale is attributed as follows: 161 of 400 cows or 40% - as agents of defendants, MJL Cattle Co. LLC and Leonard: 239 of 400 or 60% - independently by defendants, Morrow & Neff doing business as Straight A Cattle Co.
409. The purchased cows were quarantined by the State of Nebraska. Accordingly, Hills could not remove them from the feed lot where they had been delivered until examined by a veterinarian. H & H Farms paid the feed lot a feed bill of \$7,462.50.
410. After the cows were release from quarantine, H & H shipped them to Silvan Grove, Kansas and sold them in order to mitigate its damages. H & H Farms paid \$4,000 in trucking charges to haul the cows to Silvan Grove Kansas.
411. On or about November 10, 2003, 396 cows and 33 calves were sold. Six cows had already died. The gross sales receipt was \$271,726.26 and the net proceeds, after charges and commission, was \$261,275.12. H & H Farms sustained a loss of \$66,724.88 despite the fact that the cattle market was on the rise at this time. Accordingly, the fair market value of the cows H & H Farms received verses the cows it should have received was at least \$66,724.88.
412. The value of the six cows that died was \$4,920.
413. Hills expected a net profit of \$350 per calf.
414. Hills would have liked to have known he was buying cow that belonged to a cattle trader. He was not interested in sale barn cows and would not have purchased the cows if he

knew their origin. He wanted cattle that he knew the herd history and vaccinations and disease history. He was not interested in cattle grouped from four years to short and solid, because he did not want cattle that old. Also, he was not interested in 1st period cattle or cattle grouped into 2nd and 3rd period cows. These were material matters for his consideration.

415. H & H Farms filed a lawsuit against Morrow and Neff and received a default judgment for \$148,800 in damages and \$10,000 in punitive damages. No money has been paid or collected in conjunction with the default judgment.
416. Morrow, based on direct information she received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of her agency relationship with Leonard and MJL Cattle:
- a. She owned all the cows and they were 95% home raised with 5% being purchased as heifers;
 - b. She owned over 1000 cows and was selling them due to a drought in the area;
 - c. 10% of the cows were 3 years old, 80% were 4 to 6 years old, 10% were 7 to 8 years old and 100% were under 8 years old;
 - d. All the cows were black baldies;
 - e. All the cows were in their 3rd period of pregnancy and would calve between mid-October and mid-December 2003;
 - f. All the cows had been pregnancy checked;
 - g. All the cows were bred to Gardiner Angus bulls;
 - h. The colored photographs were representative of the cows Hills would receive; and
 - i. H & H Farms would receive health certificates.
417. Leonard and Morrow and Neff, as an agent of Leonard, engaged in the following unfair practices actionable under §407.020, RSMo.:

- a. A bait and switch scheme in which Hills was shown photographs of higher quality cows than most of the cows he received which was designed to induce H & H Farms to purchase the cows; and
 - b. Refusing to address H & H Farm's consumer complaints regarding the condition of the cows it received.
418. Morrow, based upon directions she received from Leonard, made the following material omissions actionable under §407.020, RSMo., while acting within the scope of her agency relationship with Leonard and MJL Cattle:
- a. Failing to inform Hills that Leonard and MJL Cattle owned at least 161 head of the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
 - b. Leonard and MJL Cattle sorted their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition as summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.
419. The court specifically finds that the entire herd of cows sold to Hills by defendants, Morrow and Neff, are representative of the misrepresentations as above set forth, including the 40% of the herd sold to Hills by Morrow and Neff as agents on behalf of defendants, Leonard and MJL Cattle Co. L.L.C.
420. Defendants Leonard and MJL Cattle and Morrow and Neff, through their own acts and the acts of their agents, committed 13 violations of §407.020 before, during or after the sale of cows to Consumer Tyler Hills.

Consumer Darin Messersmith

421. Darin Messersmith is a resident of Brady, Nebraska. He is approximately 32 years old and a salesman for an irrigation company. He has been running cattle most of his life and he assisted his parents with their cow-calf and dairy herd while growing up. In 2003, he

- purchased a small number of cows to begin his own cow-calf operation.
422. In the Fall of 2003, Messersmith was interested in increasing his herd and he and his wife obtained a FSA loan, a first time rancher's loan, which was payable over seven years.
423. In October 2003, Messersmith viewed an advertisement online that was paid for by Neff.
424. Messersmith called on the ad and spoke with Neff. Neff stated he and his mother were partners and Messersmith needed to call Morrow.
425. Messersmith called Morrow and she stated that she and her son were doing business as Straight A Cattle and they had 1000 cows for sale. She said they were selling the cows due to a drought. She represented all the cows to be: 1) between the ages of 3 and 5 years with about 15 to 20 cows at age 6; 2) black and black-white faced; 3) pregnancy checked and aged by a veterinarian within the last 2 to 3 weeks; 4) in their 3rd period and would calve October 1, 2003 to December 15, 2003; 5) bred to black Gardner Angus bulls; 6) current on vaccinations and been treated with "pour-on"; 7) in good health; and 8) home raised since birth and they began culling their cows at 10 years of age.
426. On or about October 7, 2003, Morrow emailed Messersmith approximately four colored photographs of groups of cows that were to be a representative sample of all the cows for sale. The cows in the photographs were in good condition.
427. On or about October 15, 2003, Messersmith agreed, in ownership with his wife, to purchase 160 cows represented by Morrow for \$850 per head for a total purchase price of \$136,000. On the same day, he wired \$27,200 into Straight A Cattle's checking account as a down payment on the cows.
428. Morrow told Messersmith that he would receive the "Cream of the Crop."
429. Morrow agreed to arrange trucking to haul the cows. Messersmith paid \$4,622.20 in

- trucking expenses. Two of the trucking invoices noted the cows came from Marshall, Missouri and one invoice noted that the cows came from Fayette, Missouri.
430. Morrow agreed to secure and send health certificates. No health certificates came with the truck. However, Dr. McHugh signed health certificates for cows sold to Messersmith on October 16, 2003.
431. On or about October 18, 2003, the cows were delivered. On this same day, prior to delivery, Messersmith initiated a wire transfer of \$108,800 to Straight A Cattle's account. The money was not posted to the account until Monday, October 20, 2003.
432. On or about October 20, 2003, Morrow and Neff transferred \$28,125, \$58,000 and \$175,875 into MJL's main checking account.
433. Morrow and Neff used some of the purchase money to purchase additional cattle needed to fill the order because Leonard and MJL cattle did not have enough cows on hand.
434. After Messersmith inspected the cows, he noted that many of them were not as represented. The cows were mostly thinner and of less quality than represented. Many were mangy and missing patches of hair which is consistent with being infected with insects and not having been treated with "pour-on." Most of the cows had brand marks on them; some had pink eye or horns, or had Brahma influence. One had a hip bone sticking out that was the result of an old injury.
435. The State of Nebraska quarantined the cows because they did not come into the state with health papers. Messersmith videotaped the unloading and inspection of the cows. Dr. Randy Burge performed the inspection of the 160 cows. He has been a licensed veterinarian since 1999.
436. Dr. Burge credibly opined that: 1) 30 cows were over the age of 5 years; 2) 70 were not

in their 3rd period of pregnancy; 3) 4 were open and 4) the bang tags originated from 14 different states.

437. Messersmith paid Dr. Burge \$1,914 for his services.
438. The calves varied in colors, including red, chocolate and gray and some had horns. Approximately 50 cows had Brahma or Brangus influence. This is indicative that Morrow did not know the type of bulls to which the cows were bred.
439. Six cows died within a short time period.
440. According to a review of records filed with the Missouri Department of Agriculture from the sale barns that recorded information on cows containing the same tag numbers as the cows received by Darin Messersmith only 78 of the 160 cows could be tracked. Of these cows: 1) 7 were purchased in a sale barn on or after the day Messersmith paid his down payment and of these 7 cows, 6 were purchased at Joplin Regional Stockyard; and 2) approximately 68 were purchased within three months of delivery to Messersmith.
441. According to the same records: 1) 47 could be linked to MJL Cattle; 2) 5 could be linked to D&L or Chris Jones; 3) 1 cow was linked to Klein & Sons Cattle and 4) the remaining cows had no buyer information associated with them but several were sold at Livestock Auctions with which Straight A Cattle bank account shows no connection.
442. The court therefore finds that 47 of the 160 cows purchased by Gary Sevenans were cattle sold by Morrow and Neff doing business as Straight A Cattle Co. on behalf of and as agents for defendants MJL Cattle Co. LLC and Leonard. The remainder of the cows were sold by defendants Morrow and Neff independently, doing business as Straight A Cattle Co. and not as agents of MJL Cattle Co. LLC and Leonard.
443. Therefore the percentage of this sale is attributed as follows: 47 of 160 cows or 29% - as

agents of defendants, MJL Cattle Co. LLC and Leonard: 47 of 160 or 71% -
independently by defendants, Morrow & Neff doing business as Straight A Cattle Co.

444. Messersmith testified that cull cow prices at the time he sold his cows were 20 to 30 cents per pound
445. Messersmith testified that the fair market value of the cows he received was \$300 to \$400 per head. Therefore, he sustained a loss of at least \$450 per head for a total loss of at least \$72,000 at the time of delivery for 160 cows.
446. Messersmith stated he would not have purchased the cows if he knew they belonged to a cattle trader and knew the true history of the cows. These were material matters for his consideration.
447. Messersmith began feeding the cows supplements to get their weight up. This additional feed cost him \$1,113.40.
448. On or about March 10, 2004, Messersmith sold the cows for a loss.
449. Messersmith filed a private lawsuit against Morrow and Neff and received a default judgment for \$99,000 in damages. No money has been paid or collected in conjunction with the default judgment.
450. Morrow, based on direct information she received from Leonard, made the following material misrepresentations actionable under §407.020, while acting within the scope of her agency relationship with Leonard and MJL Cattle:
 - a. Her and her son owned 1000 head of cattle and they were selling them due to a drought;
 - b. All the cows were home raised since birth and her and Neff began culling cows at age

ten;

- c. All of the cows were between the ages 3 and 5 years, except about 15 to 20 cows were 6 years old;
- d. All the cows had been aged by a veterinarian within the last two weeks;
- e. All the cows were in their 3rd period and would calve October 1, 2003 to December 15, 2003;
- f. All the cows had been pregnancy checked by a veterinarian within the last two to three weeks;
- g. All the cows were bred to black Gardner Angus bulls;
- h. All the cows had been treated with “pour-on;”
- i. All the cows were in good health;
- j. The colored photographs were representative of the cows Messersmith would receive and he would receive the “Cream of the Crop”; and
- k. Messersmith would receive health certificates.

451. Leonard and Morrow and Neff, as an agent of Leonard, engaged in the following unfair practices actionable under §407.020, RSMo.:

- a. A bait and switch scheme in which Messersmith was shown photographs of higher quality cows than most of the cows he received which was designed to induce Messersmith into purchasing the cows; and
- b. Failing and refusing to address Messersmith’s consumer complaints regarding the condition of the cows he received.

452. Morrow, based upon directions she received from Leonard, made the following material omissions actionable under §407.020, RSMo., while acting within the scope of her agency relationship with Leonard and MJL Cattle:

- a. Failing to inform Messersmith that Leonard and MJL Cattle owned the cattle and Leonard was a cattle trader who purchased at least 90% of his cows through sale barns; and
- b. Leonard and MJL Cattle sort their cattle into various groups and subgroups based upon age, pregnancy status, breed and body condition was summarized more fully above thereby preventing them from being able to distinguish each cow's characteristics.

453. The court specifically finds that the entire herd of cows sold to Messersmith by defendants, Morrow and Neff, are representative of the misrepresentations as above set forth, including the 29% of the herd sold to Messersmith by Morrow and Neff as agents on behalf of defendants, Leonard and MJL Cattle Co. L.L.C.

454. Accordingly, Defendants Morrow, Neff, Leonard and MJL Cattle, through their own acts and the acts of their agents, committed 15 violations of §407.020 before, during or after the sale of cows to Consumer Darin Messersmith.

Defendants Leonard and MJL Cattle's Unlawful Operation

455. Leonard and MJL Cattle operated a significant unlawful cattle operation by mischaracterizing the material characteristics of their cows and engaging in a bait and switch scam. Leonard and MJL Cattle established the parameters by which the other defendants could sell their cows and participate in these unlawful activities.

456. Leonard and MJL Cattle maintained the capital, manpower and infrastructure needed to perpetuate this level of unlawful cattle operation. Leonard chose to keep his identity hidden from the consumers by purposely acting through agents in an attempt to hide his wrongdoing.
457. Leonard was untruthful to Sheriff Charlie Polson in an attempt to hid is wrongdoing. This pattern of untruthfulness continued during litigation when Leonard failed to list his prior federal criminal plea for counterfeiting in his response to an interrogatory question posed to him in which the State asked him to identify all felony and misdemeanor guilty pleas and convictions.
458. Leonard and MJL Cattle were the recipients of the majority of the ill gotten gains.
459. By Leonard's own testimony, he gave authority to Simmons, Hackman, Morrow, Neff and Ben Leonard to arrange the sale of his cows to consumers. He gave permission to the brokers to come onto his land and show potential customers his cows in the hopes that the brokers would arrange a sale of cattle for him. The brokers were an integral component of Leonard and MJL Cattle's operation in that they relied exclusively on the brokers to sell their cattle.
460. The brokers did not have an ownership interest in the cows being sold and never took physical possession of them. Leonard misrepresented the characteristics of the cows to the brokers who then conveyed these material misrepresentations to the consumers.
461. Leonard serviced the sale of the cows to the consumers by assisting in arranging transportation to haul the cows, arranging for and paying the veterinarian to prepare health certificates and by selecting which cows would be loaded for delivery to the consumers. Leonard was directly involved in the bait and switch scam to which the

victims in this case were subjected.

462. Many times Leonard and MJL Cattle did not secure health certificates for the delivered cows as represented. This action could have potentially posed a serious health threat and impact on our agricultural industry.
463. Leonard and MJL Cattle paid the brokers commissions for arranging the sale of their cows to the consumers. The brokers never paid for the cows with their own proceeds.
464. At Leonard's request, the brokers established a checking account at Alliant Bank in Boonville, Missouri despite the fact that Simmons lived at the Lake of the Ozarks, Morrow lived in Oak Grove, Missouri, Neff lived in Napton, Missouri and Hackman lived in New Franklin, Missouri. Leonard and MJL Cattle required this of their brokers so that funds could be quickly transferred on a consistent basis from one account to another without the delays incurred when transferring money from one bank to another. At times, the brokers also endorsed the consumers' checks over to Leonard for his direct deposit into his MJL Cattle checking account at Alliant Bank.
465. The brokers forwarded consumer complaints to Leonard in the hope that he would resolve them. Despite the number of complaints, Leonard decided to ignore the complaints and continue with his unlawful operation.

Credibility

466. For the most part all plaintiff's consumer victim witnesses in this case were credible and gave credible testimony substantiated by the facts.
467. Plaintiff's expert witnesses were credible and gave testimony based on scientific,

technical and specialized knowledge together with their skills, experience, training and education. This is especially true with respect to the condition of the cattle purchased by the various consumer victims as observed by the veterinarians, who examined these cattle, as well as their knowledge of the cattle industry. Their opinions were based on principals that are generally accepted in the scientific community.

468. The testimony and demeanor of defendant Mitchell Justin Leonard, was not credible. The court observed this defendant's demeanor in the courtroom and noticed that he basically avoided eye contact with any witness who was testifying and while being examined himself, in fact generally avoided eye contact with the attorney conducting the examination. The Court further finds that the defense presented herein by Mitchell Justin Leonard, i.e. that he actually *sold the cattle* to the various brokers, who are the other co-defendants in this case, and that they then resold the cattle to the consumer victims, and that he had nothing to do with the sale to the consumer victims, is beyond belief and not supported by any of the credible evidence. This is especially due to the fact that Mitchell Justin Leonard and MJL Cattle Co. LLC never received any monies until the cattle were actually sold to the consumer victims by these same brokers. This defense is nothing more than a sham attempt by Mitchell Justin Leonard to distance himself from the other defendants and from the consumer victims. The evidence is obvious that Mitchell Justin Leonard was instrumental in knowingly either directing or allowing his broker agents to play the game of "bait a switch" with the consumer victims with respect to all of these cattle sales.

469. Defendants Peggy L. Morrow and her son are also two persons whose credibility in the courtroom as witnesses in this case are suspect at best. Both of these defendants claimed to have no memory of obvious facts in which they were intricately involved. The court

finds that their testimony is also beyond belief, except for the fact, that they were showing cattle to consumer victims on land on which was either owned or controlled by defendant, Mitchell Justin Leonard and sold some cattle for Mitchell Justin Leonard. This court finds that defendants Morrow and Neff learned the art of “bait and switch” from Mitchell Justin Leonard and then decided to try to go on their own in this business, as Straight A Cattle Co. However, they did not always have the ability to procure the number of cattle needed to complete each transaction and had to continue to broker some cattle as agents for defendant, Mitchell Justin Leonard.

CONCLUSIONS OF LAW

Based upon the above findings, the Court makes the following Conclusions of Law:

1. This Court has personal and subject matter jurisdiction over the parties to this action and venue is proper in Howard County, Missouri pursuant to Section 407.100.7.
2. The Attorney General is authorized by the Missouri Merchandising Practices Act to seek injunctive and other equitable relief, including restitution, civil penalties, and costs of his investigation and prosecution. §407.010 *et seq.*
3. The cattle offered and sold by Defendants are merchandise as defined by § 407.010(4).
4. The consumer victims are proper “persons” for whom Plaintiff may seek and this Court may order the payment of restitution to Plaintiff to restore the victims’ ascertainable losses. §§407.010.5 and 407.100.4.
5. Plaintiff’s claims at trial are within the statute of limitations and are not otherwise estopped or barred.
6. Plaintiff claims do not violate the Fifth, Sixth, Seventh, Eight or Fourteenth Amendments

of the Constitution of the United States of America, and Article I, §10, Article I, §19, Article I, §18a, Article I, §21 and Article I, §2 of the Missouri Constitution.

7. Defendants do not present sufficient evidence or cognizable legal arguments for this Court to find in their favor on any other affirmative defense raised or legal arguments presented in their prior pleadings in this matter, except that this Court found in a prior ruling that Quality Beef Partnerships' transaction with Simmons was barred by a three year statute of limitations.
8. Section 407.020.1, provides that the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice . . . whether committed before, during or after the sale, advertisement or solicitation."
9. A misrepresentation is any "assertion that is not in accord with the facts." 15 CSR 60-9.070(1).
10. "material fact is any fact which a reasonable consumer would likely consider to be important in making a purchasing decision, or which would be likely to induce a person to manifest his/her assent, or which the seller knows would be likely to induce a particular consumer to manifest his/her assent, or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner." 15 CSR 60-9.010(C).
11. "Reliance, knowledge that the assertion is false or misleading, intent to defraud, intent that the consumer rely upon the assertion, or any other capable mental state such as

recklessness or negligence, are not elements of misrepresentation as used in section 407.020.1, RSMo.” 15 CSR 60-9.070(2).

12. A misrepresentation can come in the nature of “half-truths” such that, “It is a misrepresentation for any person . . . to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading. 15 CSR 60-9.090.

13. According to 15 CSR 60-8.020, an unfair practice is any practice which –

(A) Either-

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

14. Pursuant to § 407.100.1, this Court may enter an injunction prohibiting any person from continuing any “method, act, use, practice or solicitation” that is unlawful under Chapter 407, “prohibiting such person from continuing such methods, acts, uses , practices or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

15. Pursuant to § 407.100.4, this Court may also enter an order of restitution payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss . . . which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter.

16. Pursuant to § 407.100.6, this Court may award to the state a civil penalty of up to \$1,000 for each violation of Chapter 407.
17. Section 407.140.3 requires this Court, if it orders the payment of restitution pursuant to § 407.100.4, to also award to the state an additional amount “equal to ten percent of the total restitution awarded, or such other amount as may be . . . awarded by the court which amount shall be paid into the state treasury to the credit of the merchandising practices fund.”
18. Section 407.130 entitles the Attorney General to recover the costs of his investigation and prosecution of any action brought to enforce the provisions of chapter 407, in addition to normal court costs. These funds shall be paid into the state treasury to the credit of the merchandising practices revolving fund. §407.140.4.
19. Once a determination has been made that a defendant has engaged in a practice unlawful pursuant to Chapter 407, potential harm to the public is presumed for purposes of awarding injunctive relief under Chapter 407. *State ex rel. Webster v. Milbourn*, 759 S.W.2d 862, 863 (Mo. App. E.D. 1988).
20. Irreparable harm is not a prerequisite to an injunction issued in favor of the State pursuant to § 407.100. *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 370 (Mo. App. W.D. 1973).
21. The Attorney General need not establish the inadequacy of legal remedies as a prerequisite to an injunction issued pursuant to § 407.100. *State ex rel. Nixon v. Telco Directory Publishing*, 863 S.W.2d 596, 599 (Mo. 1993).
22. The Court finds that the acts and practices giving rise to Defendants violations have been used and employed so frequently as to be standard practice in Defendants sale of cattle in

trade or commerce.

23. Plaintiff may establish Defendants' liability under the Missouri Merchandising Practices Act by proving Defendants direct violations of the Act or by vicarious liability through the acts of their agents. *Cohen v. Express Fin. Serv., Inc.*, 145 S.W.3d 857 (Mo. App. W.D. 2004); and *Groh v. Shelton*, 428 S.W.2d 911, 916 (Mo. App. S.D. 1968).
24. "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." *Restatement (Third) of Agency §1.01*. "A principal is undisclosed if, when an agent and a third party interact, the third party has no notice that the agent is acting for the principal."² *Restatement (Third) of Agency §1.04(1)(b)*.
25. An agency relationship can be formed when a person has either actual or implied authority to act on behalf of another. *Restatement (Third) of Agency §§1.03 and 2.01*.
26. Based upon the evidence, the Court finds that Defendants Simmons and Hackman, acted as agents of Leonard and MJL Cattle in each of the sales transactions in which they were involved as described above.
27. Based upon the evidence, the Court finds that Defendants Morrow and Neff acted as agents of Leonard and MJL Cattle as well as independently in each of the sales transactions in which they were involved as described above.
28. As set forth in detail above, Defendants Leonard, MJL Cattle, Morrow and Neff, through their own actions and the actions of their agents, repeatedly violated §407.020.
29. Leonard and MJL Cattle were undisclosed principles and are vicariously liable for the

acts of their agents who were acting within the scope of their authority while conducting their unlawful cattle sales. Leonard conferred such authority onto the brokers.

30. The Court finds that all evidence presented, together with reasonable and warranted inferences or conclusions, proves that all of the Defendants engaged in a pattern of consumer abuse unabated by recurring consumer complaints, and none of the Defendants cannot be trusted to offer or sell livestock in this State to consumers in compliance with §407.020.
31. The Court finds that all evidence and inferences prove that the only way to make all of the Defendants stop abusing and taking advantage of consumers, and the only way to protect consumers from all of the Defendants' abuses, is to order the natural Defendants to immediately cease having any further participation or ownership role whatsoever in the livestock industry.
32. The Court finds that Plaintiff is entitled to injunctive relief to prevent further violations of Chapter 407 and enters the specific injunctions set forth below.
33. Plaintiff established the legal proof sufficient to provide the rational basis required to establish the consumer victims' ascertainable losses. The legal standard is not absolute certainty, but rather, "a sufficient factual basis such that the estimate of the loss is not based upon speculation or conjecture." *Hanes v. Twin Gable Farm, Inc.*, 714 S.W.2d 667, 669 (Mo. App. W.D. 1986), citing *Swiss- American Importing Co., v. Variety Food Products Co.*, 471 S.W.2d 688, 690 (Mo. App. E.D. 1971).
34. Consequential damages, in addition to actual and benefit of the bargain damages, are recoverable under the Missouri Merchandising Practices Act. *Ullrich v. Cadco*, 244 S.W. 3d 772, 779 (Mo. App. E.D. 2008). "Consequential damages are "those damages

naturally and proximately caused by the commission of the breach and those damages that reasonably could have been contemplated by the defendant at the time of the parties' agreement." *Ullrich*, at 779, citing *St. John's Bank & Trust Co. v. Intag, Inc.*, 938 S.W.2d 627, 629 (Mo. App. E.D. 1997).

35. A civil action by the Attorney General may include monetary relief for any "ascertainable loss" as provided in §407.100.4. Said losses include amounts consumers have paid or will pay in the future. *State ex rel Nixon v. Polley*, 2 S.W.3d 887, 891 (Mo. App. W.D. 1999). The Attorney General is expressly authorized to pursue broader monetary relief than private parties. §§407.025.1 and 407.100.4.
36. MJL Cattle was the alter ego of Leonard. During all relevant times Leonard maintained complete domination, not only of finances, but of policy and business practices such that MJL Cattle had no separate mind, will or existence of its own. *Mobius Mgmt. Sys., Inc.*, 175 S.W.3d 186, 188 (Mo. App. E.D. 2005). Leonard's direct actions and his act via MJL Cattle caused, facilitated, and contributed to the unlawful activities engaged in by Defendants and proximately caused the victims to suffer ascertainable losses.

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- A. Defendant Mitchell J. Leonard, individually or doing business under any name or company, or acting through an agent, servant, employee, representative, contractor, and other individual or business entity acting on his behalf or at his direction, who receives actual notice of this Judgment, is permanently enjoined and restrained from the following:
 - i. violating §407.020, by engaging in, or aiding or abetting others in any deception, fraud, false pretense, false promise, misrepresentation, unfair

practice or the concealment, suppression or omission of any material fact in connection with the sale of livestock;

- ii. from selling livestock in or from the State of Missouri and/or participating in any manner in the sale of livestock in or from the State of Missouri; and
- iii. operating, being employed by, having any ownership or investment role in, seeking to profit from, or otherwise directly or indirectly participating in any way in any business which is or may reasonably be considered part of the livestock industry.

B. Defendant Robert L. Simmons, individually or doing business under any name or company, or acting through an agent, servant, employee, representative, contractor, and other individual or business entity acting on his behalf or at his direction, who receive actual notice of this Judgment, is permanently enjoined and restrained from the following:

- i. violating §407.020, by engaging in, or aiding or abetting others in any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale of livestock;
- ii. from selling livestock in or from the State of Missouri and/or participating in any manner in the sale of livestock in or from the State of Missouri; and
- iii. operating, being employed by, having any ownership or investment role in, seeking to profit from, or otherwise directly or indirectly participating in any way in any business which is or may reasonably be considered part of the livestock industry.

C. Defendant Jason S. Hackman, individually or doing business under any name or company, or acting through an agent, servants, employee, representative, contractor, and other individual or business entity acting on his behalf or at his direction, who receive actual notice of this Judgment, is permanently enjoined and restrained from the following:

- i. violating §407.020, by engaging in, or aiding or abetting others in any deception, fraud, false pretense, false promise, misrepresentation, unfair

practice or the concealment, suppression or omission of any material fact in connection with the sale of livestock;

- ii. from selling livestock in or from the State of Missouri and/or participating in any manner in the sale of livestock in or from the State of Missouri; and
- iii. operating, being employed by, having any ownership or investment role in, seeking to profit from, or otherwise directly or indirectly participating in any way in any business which is or may reasonably be considered part of the livestock industry.

D. Defendant Peggy L. Morrow, individually or doing business under any name or company, or acting through an agent, servant, employee, representative, contractor, and other individual or business entity acting on his behalf or at his direction, who receive actual notice of this Judgment, is permanently enjoined and restrained from the following:

- i. violating §407.020, by engaging in, or aiding or abetting others in any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale of livestock;
- ii. from selling livestock in or from the State of Missouri and/or participating in any manner in the sale of livestock in or from the State of Missouri; and
- iii. operating, being employed by, having any ownership or investment role in, seeking to profit from, or otherwise directly or indirectly participating in any way in any business which is or may reasonably be considered part of the livestock industry.

E. Defendant Lance Neff, individually or doing business under any name or company, or acting through an agent, servant, employee, representative, contractor, and other individual or business entity acting on his behalf or at his direction, who receive actual notice of this Judgment, is permanently enjoined and restrained from the following:

- i. violating §407.020, by engaging in, or aiding or abetting others in any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale of livestock;

- ii. from selling livestock in or from the State of Missouri and/or participating in any manner in the sale of livestock in or from the State of Missouri; and
- iii. operating, being employed by, having any ownership or investment role in, seeking to profit from, or otherwise directly or indirectly participating in any way in any business which is or may reasonably be considered part of the livestock industry.

F. The Court hereby awards restitution against Defendants Mitchell Justin Leonard and MJL Cattle Co. LLC, jointly and severally, for their own acts and the acts of their agents to the State of Missouri, in the amount of \$375,131.87, to be distributed to the following persons:

- Randy Kell and his wife, \$56,657.77, which includes: 1) \$52,530.77 – fair market value difference between cows received and cows as represented; 2) \$661 - Dr. Taylor's bill; and 3) \$3,466 - trucking charges.
- Randy Byers and his partners, \$84,665.40, which includes: 1) \$67,500 – fair market value difference between cows received and cows as represented; 2) \$14,840 – lost profits due to 53 open cows; 3) \$2,325.40 – trucking charges.
- Don Collins and his wife, \$52,484.68, which includes: 1) \$36,349.68 – fair market value difference between cows received and cows as represented, minus cows that died; 2) \$12,740 – value of 15 older cows that died; and 3) \$3,395 – trucking charges.
- Quality Beef Partnership, \$22,881.20, which includes: 1) \$5,755 – fair market value difference between cows received and cows as represented; 2) \$16,200 – lost profits; and 3) \$926.20 trucking charges.
- Jeff Boardman and his wife, \$17,125, which includes 1) \$16,000 – fair market value difference between cows received and cow as represented; and 2) \$1,125 – trucking charges.
- Cory Wagner, \$31,893.30, which includes: 1) \$15,105 – fair market value difference between cows received and cows as represented; 2) \$5,300 – extra cost of \$100 per head to have cows pregnancy checked; 2) \$10,600 lost profits from lost calf crop; and 4) \$888.30 – trucking charges.
- Kenneth Schaffer and his wife, \$18,801, which includes: 1) \$4,000 – fair

market value difference between cows received verses cows as represented, minus value difference between sale barn and single source cows ; 2) \$12,000 – fair market value difference between single source and sale barn cows; 3) \$708 – Dr. Poell’s bill; and 4) \$2,093 – trucking charges.

- Robert Sager and his wife, \$13,937, which includes: 1) \$11,250 – fair market value difference between cows received and cows as represented, minus value difference between sale barn and single source cows; 2) \$2,250 – fair market value difference between sale barn cows and single source cows; and 3) \$437 – trucking charges.
- Gary Sevenans, \$16,673.18, which includes; 1) \$5,760 which is 36% of \$16,000– fair market value difference between cows received and cows as represented; 2) \$10,530 which is 36% of \$29,250 – lost profit for calf crop; and 4) \$383.18 which is 36% of \$1,064.40 of the trucking charges.
- H & H Farms; \$36,914.95, which includes: 1) \$26,689.95 which is 40% of \$66,724.88– fair market value difference of cows received verses cows as represented; 2) \$2,985.00 which is 40% of \$7,462.50 – feed lot bill; 3) \$4,560.00 which is 40% of \$11,400.00 – trucking charges from Missouri to Nebraska; 4) \$1,600.00 which is 40% of \$4,000.00 – trucking charges from Nebraska to Kansas; and 5) \$1,080.00 which is 40% of \$2,700.00 – Dr. Osterstock’s bill.
- Darin Messersmith and his wife, \$23,098.39 which includes: 1) \$20,880.00 which is 29% of \$72,000.00– fair market value difference between cows received verses cows as represented; 2) \$1,340.44 which is 29% of \$4,622.20 – trucking charges; 3) \$322.89 which is 29% of \$1,113.40 feed supplement; and 4) \$555.06 which is 29% of \$1,914.00– Dr. Burge’s bill.

G. The Court hereby awards restitution against Defendants Peggy L. Morrow and Lance Neff, jointly and severally, for their own acts and the acts of their agents to the State of Missouri, in the amount of \$186,564.86, to be distributed to the following persons:

- Gary Sevenans, \$29,641.22, which includes; 1) \$10,240.00 which is 64% of \$16,000– fair market value difference between cows received and cows as represented; 2) \$18,720.00 which is 64% of \$29,250 – lost profit for calf crop; and 4) \$681.22 which is 64% of \$1,064.40 of the trucking charges.
- Job Keltner, \$45,000, which is the amount he paid as a down payment.
- H & H Farms; \$55,372.43, which includes: 1) \$40,034.93 which is 60% of \$66,724.88– fair market value difference of cows received versus cows as represented; 2) \$4,477.50 which is 60% of \$7,462.50 – feed lot bill; 3)

\$6,840.00 which is 60% of \$11,400.00 – trucking charges from Missouri to Nebraska; 4) \$2,400.00 which is 60% of \$4,000.00 – trucking charges from Nebraska to Kansas; and 5) \$1,620.00 which is 60% of \$2,700.00 – Dr. Osterstock's bill.

- Darin Messersmith and his wife, \$56,551.21 which includes: 1) \$51,120.00 which is 71% of \$72,000.00– fair market value difference between cows received verses cows as represented; 2) \$3,281.76 which is 71% of \$4,622.20 – trucking charges; 3) \$790.51 which is 71% of \$1,113.40 feed supplement; and 4) \$1,358.94 which is 71% of \$1,914.00– Dr. Burge's bill.

- H. Defendants Mitchell Justin Leonard and MJL Cattle Co. LLC, through their own acts and the acts of their agents, committed 134 violations of §407.020. This Court chooses to assess penalties on a per transactions basis rather than on a per cows basis per this Court's discretion.
- I. The Court hereby awards and imposes a civil penalty of \$1,000 per violation for a total civil penalty of \$134,000 against Defendants Mitchell Justin Leonard and MJL Cattle Co. LLC, jointly and severally, to be paid to Plaintiff for transfer to the Howard County School Fund in accordance with Article IX, §7 of the Missouri Constitution.
- J. The Court awards an additional amount of \$37,513.19, against Mitchell Justin Leonard and MJL Cattle Co. LLC, jointly and several, which represents 10% of the above restitution amount, in accordance with §407.140.4, which amount shall be paid to Plaintiff for transfer to the state treasury to the credit of the Merchandising Practices Revolving Fund.
- K. Defendants Peggy L. Morrow and Lance Neff, through their own acts and the acts of their agents, committed 53 violations of §407.020. This Court chooses to assess penalties on a per transactions basis rather than on a per cows basis per this Court's discretion.

- L. The Court hereby awards and imposes a civil penalty of \$1,000 per violation for a total civil penalty of \$53,000 against Defendants Peggy Morrow and Lance Neff, jointly and severally, to be paid to Plaintiff for transfer to the Howard County School Fund in accordance with Article IX, §7 of the Missouri Constitution.
- M. The Court awards an additional amount of \$18,656.49, against Peggy L. Morrow and Lance Neff, jointly and severally, which represents 10% of the above restitution amount, in accordance with §407.140.4, which amount shall be paid to Plaintiff for transfer to the state treasury to the credit of the Merchandising Practices Revolving Fund.
- N. All interlocutory orders and interlocutory judgments previously entered in this case are hereby ordered and made as final judgments, except as may be inconsistent and modified by this final judgment entered herein, with respect to any party.
- O. Due to the fact that most all of the litigation costs in this case were caused to be accrued by the actions of Mitchell Justin Leonard and MJL Cattle Co. LLC and not by any other defendants, who either took passive roles in the litigation of this case, consented to judgments or defaulted the costs of this action are assessed as follows:

Ninety percent (90%) of the costs are assessed against Defendants Mitchell Justin Leonard and MJL Cattle Co. LLC, jointly and severally;

Ten percent (10%) of the costs are assessed against Defendants Peggy L. Morrow and Lance Neff, jointly and severally.

- P. This Court will award costs of investigation and prosecution, including reasonable attorneys' fees, to the State pursuant to §407,130 and will make an assessment of those costs at a hearing set for

FRIDAY, APRIL 24, 2009

AT 9:00 A.M

So Ordered:

/s/ Michael L. Midyett
Honorable Michael L. Midyett
Associate Circuit Court Judge

Dated: March 16, 2009